

Derleme Makalesi/ Review Article

**EXTRADITION – EU, KOSOVO AND ALBANIA REGULATORY
FRAMEWORK**

**SUÇLULARIN İADESİ: AVRUPA BİRLİĞİ, KOSOVA VE ARNAVUTLUK
ÇERÇEVESİ**

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ÖZ: Günümüz dünyasında devletleri barış ve güvenliğe katkı sağlamaları için işbirliğine yönlendiren suçluların geri iadesi hem hukuki bir terim olarak hem de uluslararası hukukta yasal bir süreç olarak oldukça önemli bir faktör olarak karşımıza çıkmaktadır. Tüm dünyada ülkeler barış ve güvenliği güçlendirmek adına suçluların geri iadesi ilkesini mümkün olan en iyi şekilde dizayn etmek için çabalamakta ve her faili yakalamak, mahkemeye çıkarmak ve cezalandırmak için yasal mekanizmalarını koordine etmektedirler. Suçluların geri iadesi ilkesi günümüzde hem Avrupa Birliği hem de AB'ye üye olmak isteyen ülkeler için de, örneğin Arnavutluk ve Kosova Cumhuriyeti, önemli bir mekanizmadır. Bu çalışma, öncelikle AB'nin daha sonra da Arnavutluk ve Kosova Cumhuriyeti'nin suçluların iadesi ilkesi konusunda neler yaptığını, ve süreci iyileştirmek adına ne gibi mekanizmalar geliştirdiğini analiz etmektedir. AB'ye Arnavutluk'tan farklı olarak Kosova örneğinde devletlerin Kosova'yı tanımaması gibi karşılıklı işbirliğini etkileyen 'extra' engeller bulunmaktadır.

Anahtar Kelimeler: *Suçluların İadesi, Fail, Tutuklama, Suç, İlkeler, Normlar, Yasal Engeller, AB, Arnavutluk, Kosova.*

ABSTRACT: Extradition as legal concept as well as legal phenomenon at the international law has been and is becoming one of the most important aspects to push states cooperates in order to contribute to peace and security in the world today. As such, it is broadly known phenomenon in the today's world. Countries worldwide are going through serious attempts to consolidate and design it in the best possible model aiming strengthening of peace and security by coordinating the activities and mechanism in order to ensure detention, put in trial or suffer the punishment of each and every perpetrator. Extradition today appears one of the most important mechanism and instruments within the framework of European Union. It is also becoming an important mechanism beyond Europe, namely in countries aspiring to be members of the European Union like Republic of Albania and Republic of Kosova. Thus this paper attempts to present and analyze the approaches that, first of all EU is doing and in the following Republic of Albania and Republic of Kosova, institutions are using to improve the process and consolidate the institute of Extradition, through which an rule of law, respect of human rights, transparency and democratic life is promoted.

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Different from the usual practices at EU level as well as countries like Albania with no contested statehood, in Kosovo case there are some “extra” obstacles as those of mutual cooperation between states which are still refusing the recognition of the country.

Keywords: *Extradition, Perpetrator, Detention, Offense, Principles, Norms, Legal Obstacles, EU, Albania, Kosovo.*

1. THE DEFINITION OF EXTRADITION

Peace, security and stability are among the objectives of the humankind nowadays. State actors as well as international organizations are concentrated to design and create patterns as well as necessary mechanisms to promote human rights and democracy by consolidating and coordinating the activities and the mechanism to contribute to it. There are many institutions dealing with it, some with the diplomatic nature, some with the judicial and the aim is single one; Promotion of justice and sue the perpetrator and impose the justice to him. The existence of different states imposed the need and made it crucial that cooperation between states seems to be necessary as the need to sue, arrest and transfer of the perpetrator from a state to another state appears. Extradition in criminal law and also in international criminal law means delivery of the perpetrator from a country to another (country of residence) in (the country where he is wanted) in order that against him to develop penal procedure, and execute against him the punishment which is sentenced with a decree entered into force.¹ Extradition is the surrender of a person by one State to another, the person being either accused of a (extraditable) crime in the requesting State or unlawfully at large after conviction.² There are also other definitions of the extradition when it comes to the core meaning of the phenomenon. Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmschurst in their attempts to define the extradition emphasize that “Extradition is an international institution for legal cooperation, to deliver the perpetrator from one country to another or (from country of residence to the country of judgment) (known extradition), or execution of the punishment which actually is done (executive extradition)”.³ Originally informal, extradition was the first form of legal cooperation to be regulated by international (bilateral and later multilateral) agreements.⁴ At the same time, authors like John RWD Jones and Rosemary Davidson define it as in the following “Extradition is the formal, legal process for returning persons located in one country to another for one of the following

¹Dr. Salihu, Ismet, E drejta Penale Ndërkombëtare 2005. Page 140

²An Introduction to International Criminal Law and Procedure, Extradition. Page 79. Robert Cryer, Hakan Friman, Darryl Robinson and Elizabeth Wilmschurst 2007

³Ibid. pp. 654

⁴Ibid

purposes: Criminal prosecution, sentencing (if they have already been tried convicted); or the carrying out of a sentence already imposed.⁵ Thus, many other definitions elaborate the institute of extradition as kind of transfer of a suspected person to a state which is actually claiming him/her back. Of course, such a measure must be based as well as regulated by the legal mechanism starting from the constitutions and laws as internal legal mechanism and continue with the international agreements as to reflect the readiness for cooperation between the different countries. Extradition between nations is usually based on a treaty between the country where the accused is currently located and the country seeking to place him or her on trial for an alleged crime.⁶ Extradition is a legal process by which a person suspected or convicted of a criminal offence is transferred from one country to another for the purposes of prosecution, or to serve a sentence already imposed.⁷

In European context, extradition seems to be a very necessary act if it is considered the character always much more complicated of the criminality. After treating a concept of definitions it will explicate juridical nature of extradition institution. Extradition represents juridical relations that are set between two countries, in all those cases where the competent authorities of penal preceding are not able to act outside the territorial jurisdiction, to complete their functions due to the location of the perpetrator or place of the execution.⁸

2. LEGAL OBSTACLES FOR EXTRADITION

As abovementioned, extradition as an act as well as mechanism must be done in compliance with the international as well as international legal norms. At the same time, there are legal obstacles for the extradition, which will be treated in this chapter, and they can be regarded as in the following;

- regarding the perpetrators of the offenses,
- the type of offense,
- territorial principle of criminal law action,
- obstacles (reasons) for the development of procedural criminal proceedings.⁹

⁵Extradition and Mutual Legal Assistance Handbook Second Edition, Edited by John R W D Jones and Rosemary Davidson. Page 3.

⁶For more check at; <http://legal-dictionary.thefreedictionary.com/extradition>. Lastly updated on January 9th, 2017.

⁷For more check at; <http://www.prisonersabroad.org.uk/wp-content/uploads/2015/07/extradition.pdf>. Lastly updated on January 9th, 2017.

⁸Extradition and European Detention Order 2011. pp .40.

⁹Ibid. pp 151

- In the following, in order to clarify the nature of extradition in general and the legal obstacles in particular, as per space we have within this paper, we will try to elaborate first two legal obstacles.

2.1. Obstacles For Extradition Related To The Perpetrator Of The Offense

A. Citizenship As An Obstacle For Extradition

In national legislation of European Countries and a great number of international contracts it is acquired general principle that native citizenship cannot be extradited. Prohibition of native citizen extradition for the first time in internal justice is anticipated in Belgium Law on extradition in (1833), while in international relations in the interstate contract on extradition between France and Belgium in (1834).¹⁰ Apart from it, many countries have mentioned it also in the reservation texts which are attached to the convention itself. Among many countries which reflected to this obstacle, Kosovo has done the same, pursuant to article 517; clause 1 of Criminal Procedure Code where it is anticipated that only the foreign citizen can be transferred (extradited), and extradition of Kosovo citizenship is prohibited without considering it if he committed the offense in Kosovo or abroad. Now this issue is regulated through the article 219 of the new Criminal Procedure Code¹¹, and Law no. 04/1-213 on International Legal Cooperation in Criminal Matters as well as the nationality of the perpetrator of the offense – this principle is confirmed in articles 6-1a) and 6-2 of Extradition Convention¹², where each undersigned party will have right to dispute extradition of its citizen. But we must admit that the rule of non-extradition is not general in time and space. In the history, the undersigned treaty between France and Savoya in 1376 anticipated that parties must surrender their citizen, and decree of 23 October 1811 admitted non-expressly surrenders of French citizens even though the practical French citizen's occurred in the XIX century. The Anglo-Saxon countries admitted always extradition of their compatriots in the countries which are engaged to admit the reciprocity principle. Italy even though set up the rule of non-extradition in article 13 of its Criminal Code, makes exclusion when it is anticipated clearly by any international convent.¹³ Pursuant to Albanian legislation by recognizing that the request for extradition shall be denied “when the required person is Albania citizen and there isn't any agreement that anticipates otherwise”, as it is shown this sanction is not absolute since the extradition of an Albania

¹⁰Dr. Salihu, Ismet, E drejta Penale Nderkombetare. pp 151

¹¹ Art 219, International request, Code Nr. 04/1-123, on Criminal Procedure–RP of Kosovo.

¹² Convention of Extradition in articles 6-1a) and 6-2

¹³Mr. Pradel Jean, Mr Gert Vermeulen, Mr geert Corstens, E drejta Penale Europiane. Perkthyer nga Edmond Xhabija, Valbona Nano, Tirane 2009. ppe 107,108.

citizen is allowed if there is an accord.¹⁴ The requests of extradition as well against Albania citizens who have committed offences abroad and they returned mustn't be admitted. Criminal Code in article 6¹⁵, enables a person to be convicted under Albanian law.¹⁶

Lack of state mutual recognitions could be considered as barriers to extradition e.g. Kosovo relations and possible extraditions with Republic of Serbia, Bosnia and Herzegovina and other states refusing to recognize Kosovo. But, even in these cases, there are mechanisms to find and enable extraditions. Kosovo has filed a request for extradition from Serbia, which still does not recognize Kosovo. This procedure is performed formerly by UNMIK¹⁷, while nowadays this procedure is performed by the Office of the High Representative of the EU (EUSR). Therefore, in these cases the Office of the High Representative of the EU (EUSR), through its representatives in the Ministry of Justice, is responsible for facilitating cooperation between the Ministry of Justice and institutions in countries still have not recognizing Kosovo. E.g. the request for extradition submitted by the Ministry of Justice and forwarded to the relevant authorities through the EUSR. Apparently, EUSR serves as a bridge to these cases. So far, there were 3 extraditions from countries that have not recognized Kosovo still and they are as follows; Greece, Bosnia and Slovakia.¹⁸

There are other similar barriers for extradition between other states due to the lack of relations and different political obstacles as well as dual citizenship like cases of Bosnia and Herzegovina, Croatia and Serbia whose citizens keep dual citizenship. The Ministry of Justice of Bosnia and Herzegovina claims that there are many obstacles to such an agreements. Croatia would have to change its constitution, for example, while Serbia and Bosnia would have to amend their criminal codes.¹⁹ The political climate as well as political will remains a real obstacle for the extradition between these states too.

B. Humanitarian Causes As An Obstacle For Extradition

Humanitarian circumstances constitute obstacles for extradition too. It is anticipated within the internal legislation of many countries that some humanitarian

¹⁴Dr.Xhafo Jola (cikel leksionesh) E Drejta Penale Ndërkombëtare. Tirane 2009. pp 288.

¹⁵ Art 6, Criminal Code of Republic of Albania, adopted with the Law Nr.7895, date 27.1.1995

¹⁶ Prof.as.Dr. Hoxha Artan, Halim Islami dhe Ilir Panda, Procedura Penale. 2011. pp 659.

¹⁷ United Nation Mission in Kosovo, based on Resolution 1244.

¹⁸ Information taken by the Albanian Ministry of Justice.

¹⁹For more check at; <http://www.balkaninsight.com/en/article/balkan-prosecutors-act-to-ease-dual-citizenship-dilemma> . Lastly updated on January 9th, 2017.

causes might be considered as obstacles for extradition. Such causes for refusal of extradition are those as in the following:

- older age,
- disease,
- minor age... etc,

Prof. Ismet Salihu stipulates examples of the Nordic countries and Swiss legislation. Within these legislations, he emphasizes that “It is not allowed extradition of minor age person, sick person as well as the person with family hardship and similar causes”.²⁰ Anyway, the European Convent of Extradition doesn't mention the circumstances in relation to the age, health situation and other personal reasons, which are mentioned in bilateral conventions of extradition. For instance France has ratified the convention by a declaration by which the delivery of person may be refused, if it brings him extremely grave consequences due to his age²¹, this applies also for elderly and minors.

2.2 The Type Of Offense As An Obstacle For Extradition

Within a large number of international contracts and European Convention on Extradition is anticipated that the request on extradition will be refused for the following offenses: Political offense, military offences, fiscal and financial offense, oppression offense and offence that are persuaded according to private claims.²² Let us elaborate in the following, at least, some of them.

A. Political Offenses

First ideas about none extraditing of perpetrators of political offense began in second half of XIX century, and in the extradition Law of Belgium (1833)²³. Regarding the qualification issue of political offense are given various opinions therefore such acts according to Professor Salihu are considered those that threaten internal and external security of a country, constitutional system, sovereignty, independence and territorial integrity. Kosovo applicable criminal legislation, promotes the principle of non permission extradition for political offense.²⁴ Pursuant to article 3-1 of 1957 European Convention, extradition won't be admitted if the act for which it is required is considered political. According to a decision in France, political acts are those that threaten policy that is directed by the Government and sovereignty, against constitutional system and separation of powers. Doctrine of international criminal law a great importance gives to political

²⁰ Dr. Salihu, Ismet, E drejta Penale Ndërkombëtare 2005. pp 153

²¹Mr. Pradel Jean, Mr Gertts Vermeulen, Mr Geert Corstens, E drejta Penale Europiane. Perkthyer nga Edmond Xhabija, Valbona Nano, Tirane 2009. pp 106

²²Cited source 2005. pp 154

²³Ibid. pp 154

²⁴Cited source 2005. pp 155

crimes, what is confirmed even by Institute of International Justice, which states that; “even if a law doesn’t anticipate non-permission of extradition for political offense, it should respect justice norms that prohibit hand over of defendant for a political act.”²⁵ More than this, article 5(1) of the 1987 Extradition Treaty between Spain and Argentina stipulates: “Extradition shall not be granted for political offences or offences related to offences of such a nature.” It provides, however, that “b) acts of terrorism [and] c) war crimes and crimes which are committed against the peace and security of mankind” shall not be considered political crimes.²⁶

B. Military Offenses

Military offenses are criminal acts through which are threatened defined arrangements of military services, particular duties of military effectives and generally duties to the National Defense.²⁷ As a military offense is, also, considered desertion, disobedience refuse of execution of the order or refuse of admission of weapons etc.

Pursuant to European Convention on Extradition of 1957, extradition for the reason of a military criminal offense which is not anticipated by the common justice is excluded from application scope of this convention. Non extradition regarding clearly military offenses, as desertion, but not acts of common justice committed by a military effective, for instance theft committed by a military effective doesn’t prohibit his extradition, of course if are completed the other requirements anticipated with this convention.²⁸

C. Economical – Fiscal Offenses

Economic and fiscal offences are also excluded to be subject of extradition. According to a large number of international contracts and national legislations was excluded the possibility of extradition for such offenses, such an issue was considered as interference in economic relationships of the other country.²⁹ After collapse of communist economic system, the former communist countries introduced the market and trade economy, actually economic relationships between countries developed, thus such developments can have influences between countries and this form of criminality shouldn’t be considered obstacle for extradition but furthermore it is being used in international cooperation to prohibit

²⁵Dr.Xhafo Jola (cikël leksionesh) E Drejta Penale Ndërkombëtare, Tirane 2009. pp 289

²⁶ International Committee of the Red Cross(CH). For more check at; <https://ihl-databases.icrc.org/> . Lastly updated on January 9th , 2017.

²⁷ Dr. Salihu, Ismet, E drejta Penale Ndërkombëtare. Prishtine 2005. pp 156

²⁸Mr. Pradel Jean, Mr Gert Vermeulen, Mr Geert Corstens, E drejta Penale Evropiane. Përkthyer nga Edmond Xhabija, Valbona Nano, Tirane 2009. pp 117

²⁹Ibid..pp 157

and combat such type of criminality. Bilateral convention also (prior to Convention of 1957), systematically excluded extradition for financial offences, customs and currency exchange as it is being used for military offenses. In article 5 of European Convention on Extradition of 1957, it is anticipated that in the field of taxes and customs, exchange, extradition will be admitted only if member states agreed for every offense or categories of offenses.³⁰ Fiscal evasions an obstacle of economic development for a country, since it seriously damages material goods of society, and makes impossible to encase the budget of the state, therefore this act is persuaded as with internal and international legislation. As a very serious crime against state it is anticipated even with Criminal Code of Kosovo (article 249 avoidance from taxation). European Convention for extradition anticipates extradition of persons with criminal offenses.

D. Criminal Offenses Of Oppression

Previously these acts were identified with political and religious offenses and these with international conventions were considered as cause for possibility of exclusion from extradition.³¹ Actually these ideas belong to the past, therefore basing in international and internal legislation and international accords hardly are any provisions that prohibit extradition. According to the criminal legislation of Kosovo, such acts do not constitute a crime to be subject of extradition.

4. EXTRADITION AT THE EU MEMBER STATES EUROPEAN ORDER OF DETENTION

Extradition at the EU member states is done based on the Convention on Extradition between the Member States of the European Union 1957. Before signature of this convention there are taken into account a number of conventions. These conventions are as in the following:

- Convention on Extradition of 13 December 1957 (hereinafter referred to as the 'European Convention on Extradition`),
- The European Convention on the Suppression of Terrorism of 27 January 1977 (hereinafter referred to as the 'European Convention on the Suppression of Terrorism`),
- The Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders in relations between the Member States which are party to that Convention, and
- the first chapter of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974 (hereinafter referred to as the

³⁰Ibid. pp 118

³¹ Dr. Salihu, Ismet, E drejta Penale Ndërkombëtare. Prishtine 2005. pp 158.

'Benelux Treaty') in relations between the Member States of the Benelux Economic Union. Art 2. Paragraph 1 shall not affect the application of more favorable provisions in bilateral or multilateral agreements between Member States, nor, as provided for in Article 28 (3) of the European Convention on Extradition, shall it affect extradition arrangements agreed on the basis of uniform or reciprocal laws providing for the execution in the territory of a Member State of warrants of arrest issued in the territory of another Member State.³²

Anyway, as composition of these pieces of legislation EU, in order to contribute to the extradition which is subject of this paper, and in order to accelerate activities within the EU framework managed to draft and adopt the abovementioned convention. The aim of the Convention on Extradition, now replaced in most cases by the Framework Decision on the European arrest warrant, was to facilitate extradition between the Member States in certain cases. It supplemented the other international agreements such as the European Convention on Extradition 1957, the European Convention on the Suppression of Terrorism 1977 and the European Union Convention on Simplified Extradition Procedure 1995.³³

According to European Union Law except extradition as an important and key instrument in the field of international juridical cooperation in criminal matters, there is also another mechanism which is created with framework decision of European Union Council nr. 584/13.06.2002, hereby it will be created another new legal system of cooperation in the penal field, which is so called European Order of Detention. Initially in implementation of this European Order of Detention took part only five countries which implemented this new system of cooperation in the extradition issue, whereas later this system have represented some other countries where the framework decree has started to be implemented on 1 January 2004 from member countries. This decision is preceded and followed up by several mechanisms and forms of cooperation such as: Treaty of Paris and Rome, Maastricht, Amsterdam, Nice and Lisbon, which increased forms of cooperation in the field of justice, especially in criminal matters and particularly in the field of extradition whereby as it is said above was created a new legal system which replaced extradition and was called European Order of Detention. European Order of Detention is a taken decision by a court authority of a member state in direction of detention and deliver of a person by the other country member, in

³² Convention on Extradition between Member States of the European Union. Article 1, General provisions, Page 1

³³ For more check at: <http://eur-lex.europa.eu/homepage.html> . Lastly updated on January 9th, 2017.

order to stop this person, to be exercised criminal prosecution or execution of sentence imprisonment.³⁴ Characteristic of European Order of Detention is that it simplifies the way of cooperation in this field regarding cooperation of member states by eliminating political and administrative systems of extradition. Actually the cooperation is done only by judicial authorities while administrative bodies in this case the Ministry of Justice will be notified only when the proceeding of European Order of Detention is and this all with the purpose of creating a review of keeping a statistical evidence.

Outside of the European Arrest Warrant Scheme, there is no such thing as an international arrest warrant. The closest thing available today is an Interpol 'Red Notice' through which States seek the arrest or provisional arrest of wanted persons overseas, with a view to extradition.³⁵ The European Arrest Warrant (EAW), applied throughout the EU, replaced lengthy extradition procedures within the EU's territorial jurisdiction. It improves and simplifies judicial procedures designed to surrender people for the purpose of conducting a criminal prosecution or executing a custodial sentence or spell in detention.³⁶

4.1. Extradition Procedure According To The European Law

The first framework decision to be fully implemented by all Member States was Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender of persons between Member States. The Framework Decision sets out how such surrender should work in practice but it was left to each Member State to implement the Framework Decision via its own domestic legislation.³⁷ According to classic bilateral conventions and internal law the described procedure develops in two stages:

- stage of request of extradition that is done in the request country from the country required, and
- stage of the review of this request by the country to which is required

... after previous review of Council of Europe Convention of 13 December 1957, supplementary protocol of 1978, Schengen Convention of 1990 procedure of extradition is developed in this way:³⁸

³⁴ Prof.as.Dr. Hoxha, Artan, *Ekstradimi dhe Urdhri Evropian i ndalimit 2011. Page 199*

³⁵ For more check at; <http://www.prisonersabroad.org.uk/wp-content/uploads/2015/07/extradition.pdf> . Lastly updated on January 9th, 2017.

³⁶For more check at; http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm . Lastly updated on January 9th, 2017.

³⁷For more check at; <http://www.cps.gov.uk/> . Lastly updated on January 9th, 2017.

³⁸Mr. Pradel Jean, Mr Gert Vermeulen, Mr geert Corstens, E drejta Penale Europiane. Perkthyer nga Edmond Xhabija, Valbona Nano, Tirane 2009. pp 127

Requesting state submits a request to the requested state, pursuant to Convention of 1957- article 12, the request drafted in a written form will be submitted in diplomatic way. The Convention has one principle and one exclusion; the principle is sending the request through diplomatic way appropriately Ministry of Foreign Affairs and Ministry of Justice of both countries; whereas there is an exception to precipitate the procedure, which requires the interference of both Ministers of Justice, and consular way. However this exclusion is preceded by a previous agreement established between two ministers of Justice. This form which is extraordinary and is used in very seldom cases became a usual form with changes in supplementary Protocol of 1978.

To the request should be attached several documents that are anticipated pursuant to article 2 of 1957 Convention:

- The original or authentic copy of sentenced decree (for extradition in order to execute judgment), or prohibition order or any other document with the same value issued with all forms of the requested state, (for extradition in order to punish him);
- A description on the fact with which is required extradition, together with legal qualification and reference articles;
- A copy of applied legal provisions or, in their lack a statement on the applied right, precise description of the perpetrator and every useful information for the citizen and his identity.³⁹

Consequently, EU countries can no longer refuse to surrender, to another EU country, their own citizens who have committed a serious crime or are suspected of having committed such a crime in another EU country, on the grounds that they are nationals.⁴⁰ Let us, in the following, reflect at the extradition situation into non EU members, more precisely case of Republic of Kosovo and Republic of Albania.

5. EXTRADITION IN THE REPUBLIC OF KOSOVO

Extradition in the Republic of Kosovo is based at the county's Constitution, international law and international agreements. Responsibility to develop and conduct administrative procedures in terms of extradition in the Republic of Kosovo falls within the Ministry of Justice, respectively Department of International Legal Cooperation, which from March 20, 2009 has received full powers to cooperate with the prosecution and courts as well as diplomatic missions and other national and international mechanisms. Legal base which serves to carry out this procedure in Republic of Kosovo apart from the Constitution and international agreements is Law no. 04/1-213 on International Legal Cooperation in

³⁹Cited source 2009. pp 128

⁴⁰http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm . Lastly updated on January 9th, 2017.

Criminal Matters. Kosovo's constitution envisages the issue of extradition under the aspect of rights, freedoms and human security according to Article 29, paragraph 1 of the constitution, under Right to Liberty and Security of noting that "Everyone is guaranteed the right to freedom and security". No one may be deprived of liberty except in cases prescribed by law and competent court noted while subparagraph 1.5 of these restrictions are for illegal entry into the Republic of Kosovo or the lawful order of expulsion or extradition.⁴¹ Extradition procedure, also in terms of handling international claims is foreseen in Article 219, international requirements where paragraph 1 of this Article, urges the state prosecutor or competent judge as soon as possible, starting requests for international legal assistance, requests extradition request for the transfer of prisoners or requests enforcement of judgments, while paragraph 2 states that; "All international requests made in accordance with the Law on International Judicial Cooperation in Criminal Matters, Law no. 04 / L-31 which ultimately means that the Law on International Judicial Cooperation in Criminal Matters is *Lex Specialis*, while paragraph 3 of this Article authorizes the Department of International Legal Cooperation in the role of international approval requirements under its mandate in terms of administrative communication with the judiciary. Article 6 of Law no. 04 / L-213 for International Judicial Cooperation in Criminal Matters stipulates that "the person wanted by another state for the purpose of criminal procedure or execution of the sentence may be extradited from the Republic of Kosovo in that country under the conditions set forth in this law".⁴²

5.1 Extradition Procedures Of Defendants And Convicted Persons

Extradition procedure began based on communication of the respective states. At the very beginning this communication occurred through diplomatic way through consulates, nowadays this way is done through administrative bodies likely Ministry of Justice of the respective state. According to Professor Dr. Ismet Salihu there are two systems through this items are arranged;

- Administrative system, and
- Mixed system.⁴³

According to the administrative sistem, which was for a long time dominant, justification of extradition request and final decision regarding to hand over is issued by the administrative body of the state wherein is the perpetrator, which issued all decisions and developed procedures for extradition of the perpetrator.⁴⁴ According to the mixed system, justification assessment for extradition request and

⁴¹ Constitution of Republic of Kosovo, Art 29, par 1, subpar 5.

⁴² Law nr. 04/L-213, on International Legal Cooperation in Criminal Issues, Art 6.

⁴³ Cited source. Page 167

⁴⁴ Ibid. Pg 167.

development of the procedure is in competence of court, while final decision, if the extradition will be allowed issues the administrative body or executive political body of the state.⁴⁵ This system is more applicable and stable wherein it is pointed out more real communication of administrative body and court. In order to develop the extradition procedure primarily should be submitted the request for extradition which is anticipated by criminal law and international conventions. To the request for extradition should attach also the factual evidences in which is relayed the based suspicion that the perpetrator has committed a criminal act.

To the request as justification should be attached the following evidences: data for identity of defendant or convicted person (name and surname, his picture, finger prints etc), decision on imprisonment designation, issue of arrest warrant if the defendant ran away or any other similar decision of court wherein are stated also the suspicion evidences against perpetrator. According to Penal Procedure Code this procedure is arranged pursuant to article 518, paragraphs 1 and 2, anticipates that the request for extradition to be done through a request, whereas actually this procedure is arranged with the Law of International Cooperation, article 17 the request for extradition is exercised as follows:

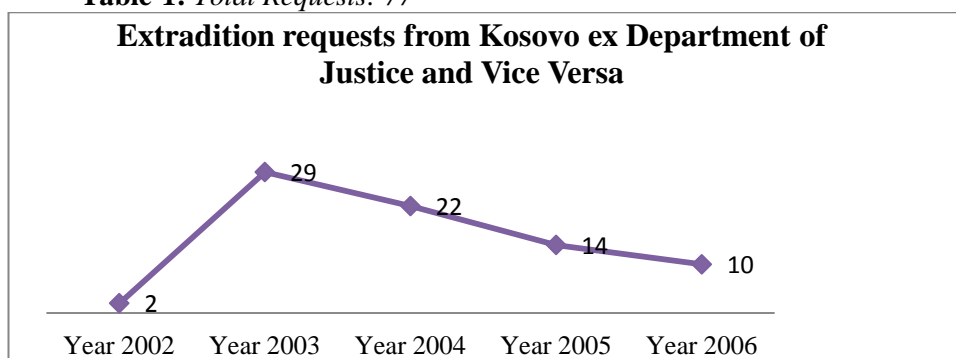
- (1) Procedure for extradition of perpetrator to be initiated only on the base of written request addressed to Ministry of Justice.
- (2) The request for extradition will present the offenses for which is required extradition and will be attached the following documents:
 1. A precise description of perpetrator, together with other data in order to help the verification of perpetrator, citizenship and location;
 2. Original or copy certified of arrest warrant issued by the appropriate body of requested country, or if the perpetrator is sentenced for any offense, Original or certified copy of decree or any other paper that defines the proclaimed punishment, fact that the punishment is executable and the left period of the punishment. These documents must have in content period and place of punishment ,his role in committing the offense, legal qualification;
 3. Extract from criminal relevant law of country, regarding to the issue;
 4. If the perpetrator is sentenced for any other offense in his absence, then it will be attached the declaration where is written that the person was invited personally, or is notified with the date and place of session that brought to the decree, or by specifying available legal means for perpetrator in order to prepare his defense or that issue to be in retrial with his presence.

⁴⁵Ibid. pp 167.

- (3) If after the review of the request, required data and papers as in paragraph (2) of this article are unsatisfied, Ministry will require from the country to complete the request.

The extradition procedure is foreseen also in Article 18 paragraph 1 and 2 of Law no. 04 / L-213 of International Judicial Cooperation in Criminal Matters. This procedure starts after the arrival of the extradition request, based on a written request to the Ministry, while the request must contain the offense for which extradition is requested.⁴⁶ In the following, let us present in the table, extradition requests in numbers filed to the Kosovo Ministry of Justice in recent years⁴⁷.

Table-1: Total Requests: 77



Source: Authors Own Compilation

Within this table there are all cases filed at the Ministry of Justice of the Republic of Kosovo since 2002 till 2006 for the extradition requests from the ex Department of Justice⁴⁸ and vice versa from other states. But in the following we are presenting, in table 2, in a more detailed pattern divided into three categories – Statistics for the extradition cases (New requests, new requests in the open cases as well as responses) for the period of time between 1st of January 2007 – 31st of March 2016.⁴⁹

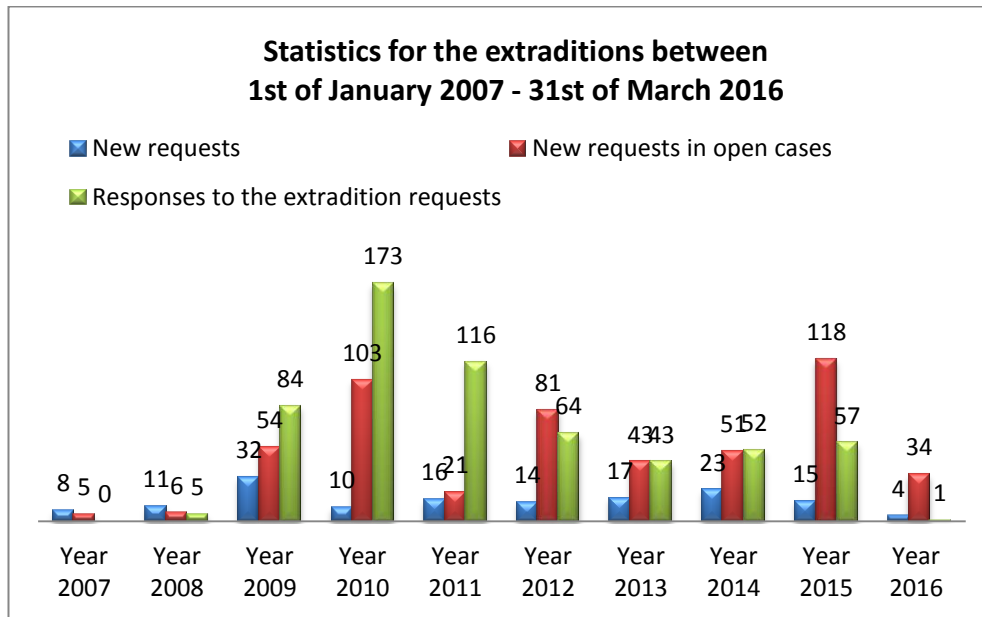
⁴⁶Law nr.04/L-213 for International Legal Cooperation on Criminal Issues,Art18, par1-2.

⁴⁷ Statistics are taken from the data of the Ministry of Justice of Republic of Kosovo.

⁴⁸ Such a body used to act before the proclamation of Kosovo's independence the equal role of a Ministry of Justice after Kosovo's independence.

⁴⁹Ibid

Table-2. Total Requests: 1261.



Source: Authors Own Compilation.

5.2. Request For Extradition Abroad

Primarily to allow extradition from the State, the requesting State must guarantee the condition that the extradited person must not be preceded or sentenced, he must not be retained in order to execute any other punishment or security measure and won't be subjected individual restrictions for another offense except that for which is allowed extradition.⁵⁰

5.3 Extradition Procedure Of The Country Where Is The Defendant Or Convicted Person

Procedure of extradition in the country where is the defendant or convicted person proceeds in two phases, first phase, or preparatory, will be reviewed is it justified the request for extradition. Regarding to first or preparatory phase of review if the request is justified for extradition, in science of the international penal right and legislation of various countries there are two systems: continental system and common law system. According to continental system the first phase of review ,when the request is reviewed for extradition consist only in verification from the court the identity of the defendant, it will be informed for what offense is required

⁵⁰Prof.as.Dr. Hoxha, Artan, "Ekstradimi dhe Urdhëri European i Ndalimit". 2011. pp 130

his extradition, and he will be notified about rights to engage a lawyer.⁵¹ Countries which use common law system the request for extradition consider as justified only if the foreign country provides sure proofs. Criminal Law of Kosovo has in content elements of both systems much more from continental system; this issue has been arranged with article 517 clause 7 of Penal Procedure Code.⁵² In the second phase will be decided if he will be allowed or refused the extradition.⁵³ In system of veto final decision of the court in final instance if the request for extradition is based produces two different legal effects. If the court finds that the request is not based, the executive body respectively administrative body of state is obliged to refuse extradition. When court finds that the request is based is left in discretion of decision from administrative political body. These solutions are possible when decision in relation to extradition is issued pursuant to internal law of the country. If there is a contract extradition the country cannot refuse extradition perverse when exist the obstacles for extradition.⁵⁴ According to the criminal procedure Code decision for extradition allowing in diplomatic way will be communicated to the state which allowed extradition article 527, Country to which is allowed extradition will be declared for admitting requirements in decision as principle of specialty, exclusion of the possibility to proclaim an imposition of defined sentence, prohibition to extradite the perpetrator to another country, if the requirements are admitted the competent bodies of both countries agree for the place, time and way of delivery of perpetrator. The decision with which is allowed extradition will be sent to the competent public body for internal affairs which orders that the foreign citizen to be accompanied up to the destination where he is delivered to the authorities of a foreign country, which required extradition pursuant to article 527 paragraph 2.

5.4. Extradition Procedure In The Country Which Requires Perpetrator Or Convicted Person

When the appropriate bodies decides for extradition of the perpetrator who is in the foreign country with a request must address to the political executive bodies to execute the extradition, this body decides according to its discretionary assessment by considering effective reasons of criminal procedure and execution of criminal sanctions, and causes of political opportunity, if political body decides for the extradition request from a foreign country, compiles the paper in written form and sends to that country.⁵⁵ This issue has been arranged with Criminal Procedure

⁵¹Ibid. pp 177.

⁵²Ibid. pp 177.

⁵³ Dr. Salihu, Ismet, E drejta Penale Ndërkombëtare. Prishtine 2005. pp 177.

⁵⁴Ibid. pp 178.

⁵⁵Ibid. pg. 180.

Code of Kosovo article 529, paragraph 1 when the perpetrator is settled in the foreign country the procedure is in proceeding, or is sentenced by local court, the competent body can exercise request for his extradition to Kosovo which will be submitted to the foreign country through diplomatic way, together with documents and data determined pursuant to article 518 of this Code. In the cases when exists the risk that the required person to be hidden or to expel the competent body requires that foreign country to undertake necessary actions to arrest or to imprison him and to submit the request for extradition, article 530 paragraph 1 in relation with article 629, in the request required for imprisonment should be stated the anticipated data pursuant to article 530, paragraph 2 of Penal Procedure Code.

In order to contribute cooperation between the states, Kosovo has signed several bilateral agreements aiming regulation of extradition. In the following we will present the extradition agreements with other countries ratified by Kosovo, which regulate, facilitate and support extradition procedures based on the Law Nr. 04/1-213 for International Legal Cooperation on Criminal Matters.⁵⁶

Table-3. Kosovo Extradition Agreements

Kosovo	Signatory party	Agreement Signature Date
Agreement between the Government of the Republic of Kosovo for extradition	Government of Macedonia	April 8, 2011
Agreement between the Government of the Republic of Kosovo for extradition	Turkey	May 31, 2011
Agreement between the Government of the Republic of Kosovo for extradition	Albania	November 6, 2012
Agreement between the Government of the Republic of Kosovo for extradition	Italy	June 19, 2013
Agreement between the Government of the Republic of Kosovo for extradition	Germany	June 29, 2015
Agreement between the Government of the Republic of Kosovo for extradition	USA	March 29, 2016

Source: Author's Own Compilation

6. EXTRADITION IN THE REPUBLIC OF ALBANIA

Extradition in the Republic of Albania is to be done based on the Constitution, Law and the bilateral and multilateral international agreements.⁵⁷ Extradition in Albania is particularly regulated through the Article 39 of the Constitution of the Republic of Albania (amended by Law No.9675, dated

⁵⁶ Data are taken at the Kosovo Ministry of Justice

⁵⁷ Taken by the Ministry of Justice of the Republic of Albania.

01.13.2007, Law no. 9904, dated 21.04.2008, the Law nr.88 / 2012, dated 18.9.2012) and Article 499 of the Criminal Procedure Code of the Republic of Albania, published in Official Publications Center in December 2014 and Law No.10 193, dated 3.12.2009 for Jurisdictional Relations with Foreign Authorities in Criminal Matters (as amended by Law no.100 / 2013 dated 18.03.2013), Chapter III, section extradition. Republic of Albania is the country which adopted the Convention on Extradition. More than this, Albania has ratified many other bilateral extradition agreements, while some of them will be presented into the list, in the following:

Table-4. *Albania Extradition Agreements*

Nr.	Year of ratification	Ratification Law (when known or is applicable)	Title of the agreement
1.	1927	No information	Convention on Extradition of Offenders between the Republic of Albania and the United Kingdom of Great Britain.
2.	1935	No information	Extradition Treaty between the Kingdom of Albania and the United States.
3.	1938	No information	Convention between the Kingdom of Albania and the Czechoslovak Republic on Extradition and Judicial Assistance in Criminal Matters.
4.	2004	Nr .9214, dt. 1.4.2004	Extradition Agreement between the Republic of Albania and the Arab Republic of Egypt.
5.	1957	Nr. 8322, dt. 2.4.1998	Council of Europe Convention on Extradition and the two Additional Protocols.

Source: Ministry of Justice of the Republic of Albania

Extradition, in Albania, is one of the earliest institutions of international legal cooperation and it has also conventional flow, extradition as international legal cooperation mean is anticipated in article 39 of the Constitution of Republic Albania, wherein it is stated that the extradition is allowed only if it is expressly with international conventions wherein Republic of Albania is party and only with court's decree).⁵⁸ Albania is part of the countries that adopted the extradition covenant on 02.03.1998. According to the Albanian law or sense of article 498 the

⁵⁸ Dr. Xhafo Jola (cikël leksionesh) E Drejta Penale Ndërkombëtare, Tirane 2009. Page 285-286

only authority that decides to allow a request is Ministry of Justice⁵⁹, i.e. Ministry of Justice Republic of Albania when it finds that there aren't completed legal requirements to award extradition pursuant to Albanian Law and decides to refuse the request, usually it is done conform with decision of Court and Prosecution, even though in practice doesn't happen to act against such decisions, nevertheless it is exactly in the domain of Ministry to decide for allowing or non allowing extradition. Before the extradition is allowed from the Albanian State or to be indicated such a procedure should have a look if such an agreement exists, multilateral or bilateral, with the state which submitted such a request, this form of cooperation is anticipated pursuant to the Albanian Law or better to say with Constitution of Republic Albania article 39/2 with Criminal Code, Article 11 and Code of Criminal Procedure, Article 10. According to the Criminal Law and Penal Procedure in Republic of Albania there are two forms or ways of extradition, extradition abroad passive extradition , extradition abroad active extradition.

7. CONCLUSION

As it can be seen from what is elaborated into this paper, extradition remains one of the most important legal as well as political phenomenon on pushing states toward ensuring rule of law, fighting different negative phenomenon as well as strengthen peace, security, respect for human rights and democracy and stability in the world. As such, it is regulatory subject of many international organizations like European Union in their attempts to consolidate and design inter-state cooperation. It is also becoming the most important mechanism and instrument among the different states in Europe as well as among other single states just like those elaborated into the paper, Albania and Kosovo.

Extradition within the EU context is regulated by the Council of Europe Convention of 13 December 1957, supplementary Protocol of 1978, and Schengen Convention of 1990. It has been under the different supervisory bodies and procedures so far for which we can conclude that it has shown a substantial progress on the matter in the years after the approval of the Convention. As other countries which aspire to be member of the EU must comply with the rules and procedures as well as the all EU legislation known as *Acquis Communautaire*, Republic of Albania and Republic of Kosovo, two countries from the Balkans aiming the EU membership are making their attempts to comply with the EU norms. As the first have no problem in this regard, the second one is still facing many obstacles in this toward as consequence of lack of recognitions from different countries. Anyway, the numbers are showing up that there is a progress in this

⁵⁹ Prof. Ass. Dr. Hoxha Artan, Halim Islami dhe Ilir Panda. *Procedura Penale* 2011. Page 663

toward as well as a long way ahead, for both countries, first of all to create a proper legal base which later on must be implemented into the reality.

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