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Stefanovska, Vesna

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Indexing

Abstracting

GENERAL CONCEPT OF EXTRADITION AND THE TRIBUTE OF HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA

Vesna Stefanovska

Republic of Macedonia

[vesna.stefanovska87\[at\]gmail.com](mailto:vesna.stefanovska87[at]gmail.com)

Abstract

The theories behind extradition, the rule of “prosecute or extradite” and the idea of using due diligence when prosecuting and punishing a criminal offender need to be explored in details, relying on both customary international law and treaty based law. Luring fugitives into international waters or cooperating with another state in the frames of the process of extradition are options which may help in bringing fugitives before justice. Republic of Macedonia among other states has recognized the need for cooperation in criminal matters through the use of extradition as one of the earliest forms of inter-state cooperation in any domain. This paper explains how extradition is governed in the internal legislation of the Republic of Macedonia and the necessary changes which have been made in order to increase the effectiveness of extradition and to preserve human rights from possible violations.

Key words: extradition; criminal offender; prosecution; extradition agreement; human rights

INTRODUCTION

The level of international judicial cooperation in the criminal area in recent decades is now on a scale which has long surpassed the classical framework that governs extradition. The Republic of Macedonia has for some years initiated the process of Euro-integration which is a necessary alignment of Macedonian criminal legislation with the laws in developed European countries and the need to implement the provisions of the most important international conventions ratified by the Republic in recent years and now they have become an integral part of the legal order. Along with the development of the integration of European countries and their mutual cooperation, the emergence of European criminal law and the establishment of international criminal courts, on the one hand and the expansion of crime on the other hand, there is a considerable increase in requests for mutual cooperation between states (Stefanovska 2012).

First of all, extradition as a way of international cooperation between states with a sole purpose to bring criminal offenders before justice has been regulated with Chapter XXX – Procedure for giving international legal aid and enforcement of international agreements in criminal matters and Chapter XXXI – Procedure for extradition of accused and convicted offenders and the procedure for transfer of convicted offenders from the Code for Criminal Procedure (1997). In this chapter it was provided that extradition will be conducted in accordance with the provisions of this law if it is not contrary with the European Convention on Extradition and other international agreements ratified in accordance with the Constitution. The first and the most important assumption for extradition among others, was that the person cannot be/must not be a citizen of the Republic of Macedonia, having in mind that the national exceptional rule applied in a very strong form (Article 510 1997).

The main problem that appeared is connected with the fact that the Code covers just a small part of the provisions regarding extradition and the provisions from international conventions and additional protocols.

Because of the above mentioned, there was a need to bring a completely new law to regulate and cover the whole procedure of extradition among other international procedures for cooperation between states. The new Law on International Cooperation in Criminal Matters (2010) is written in the spirit of respecting the standards determined and supported by the Council of Europe and the most important is that the Law guarantees an appropriate level of international cooperation in criminal matters and regulates the procedure of extradition, promising an effective fight against the criminal.

The struggle against transnational terrorism in a way of extraditing criminal offenders for the committed crimes was a main point for constitutional changes in the highest normative act of the Republic of Macedonia. With the constitutional changes it has been provided: “A citizen of the Republic of Macedonia may neither be deprived of citizenship, nor expelled or extradited to another state, except on the basis of ratified international agreement or with a court decision” (Decision No.07-2055, 2011).

In connection with the procedure of extradition of aliens, it must be mentioned Article 29 of the Constitution which prescribes: “the extradition of aliens can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. Aliens cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences” (Article 29 1991).

TRANSNATIONAL FIGHT AGAINST TERRORISM AS AN INSTRUMENT FOR CONSTITUTIONAL CHANGES

The transnational dimension of terrorism, a direct result of the increasing mobility of people and goods, is exacerbated by the increasing ease with which information circulates worldwide. In this increasingly interdependent world, no country can tackle terrorism effectively in isolation and cooperation among states to prevent and punish acts of terrorism is therefore of paramount importance. The ability of states to assist each other quickly and efficiently is no longer an optional bonus but an absolute necessity if they are to combat terrorism effectively. The international counter-terrorism conventions and protocols provide the essential legal tools and mechanisms for national authorities to carry out cross-border investigations and to eliminate safe havens for suspected terrorists. These

treaties focus on international cooperation with regard to criminal justice and are designed to facilitate investigation and prosecution when offences are of an international nature. This does not include additional forms of cooperation in the fight against terrorism, such as the exchange of information in the interests of national security, the identification of crime trends and the study of the scope and nature of terrorist organizations. Of the various forms of international cooperation in criminal matters that are recognized in states' national practice and doctrine, extradition and mutual legal assistance form the main focus of the treaties (UNODC 2012, 1).

One very important question that arises in the fight against international terrorism is how states incorporate international instruments into their internal legal systems? A difference can be made between monist and dualist systems. Some states follow a "dualist" approach, whereby international law and national law are considered two separate legal systems and a law is required for the incorporation of each international obligation in national legislation. In "monist" countries, the ratification and subsequent publication of a treaty automatically incorporates the provisions of that treaty in national law. The Constitution of the Republic of Macedonia in Article 118 prescribes: "International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law" (Article 118 1991). This means, that after their ratification, international agreements become part of the internal legal system and have equal force as the domestic agreements and legal provisions.

After the break-up of the Socialist Federal Republic of Yugoslavia, the Republic of Macedonia as a new sovereign state has followed the example of Slovenia, Croatia, Bulgaria and Montenegro and in 2011 the Assembly prepared a draft-amendment to the Constitution that was submitted to public debate. According to this matter, the Constitution refers to the fact that: "A decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. A draft-amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of representatives and then submitted to public debate" (Article 131 1991).

The draft-amendment XXXII to the Constitution was prepared in order to allow extradition of nationals only on the basis of ratified bilateral agreements, following a court decision. Many comparative experiences and international standards and instruments were used such as:

- United Nations Convention against Transnational Organized Crime (2002), ratified by the Republic of Macedonia on 12 January 2005;
- United Nations Convention against Corruption (1999), ratified by the Republic of Macedonia on 13 April 2007;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (ETS no.198 2005), ratified by the Republic of Macedonia on 27th May 2009;
- Criminal Law Convention on Corruption (ETS no.173 2002), ratified by the Republic of Macedonia on 28th July 1999 and
- Convention on Cybercrime (ETS no.185 2001), ratified by the Republic of Macedonia on 15th September 2004.

NON-EXTRADITION OF NATIONALS: SETTING BOUNDARIES IN ORDER TO ACHIEVE JUSTICE

Non-extradition of nationals is a principle that is well known in the extradition practice all over the world and dating from medieval times. Now with considerable changes in the international legal system, in international criminal law there follows a change in non-extradition of nationals as one of extradition principles, providing an opportunity for states to clarify the complicated status of a certain number of their inhabitants, by attaching a declaration defining the meaning of the term “nationals” for the purposes of the application of the European Convention on Extradition (Elezi, Georgieva and Ristoska 2010, 4).

The European Convention on Extradition (CETS 24 1957) prescribes: “A Contracting Party shall have the right to refuse extradition of its nationals. Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention” (Article 6 1957).

Actually if we look the declarations and reservations made to the provisions of the Convention, we can notice that many states made declarations to Article 6 concerning the refusal of extradition of nationals and on that way they are protecting the human rights of their own citizens. Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Estonia, Germany, Greece, Liechtenstein, Luxembourg, Moldova, Montenegro, Poland, Russia, San Marino and Ukraine made declarations in respect of Article 6. The Republic of Macedonia is also in this group of states which do not allow extradition of its own nationals, but this declaration should be amended in respect of the Constitutional changes. (Reservations to ECE 1997) Romania has an interesting declaration by which extradition of own national is allowed, but only in strict conditions. France has also an interesting declaration made to Article 6 saying: “extradition shall be refused when the person sought had French nationality at the time of the alleged offence” (Declaration to the ECE 1986). The Government of Georgia reserves the right to decide on the extradition of its nationals on the basis of reciprocity and to refuse their extradition on the grounds of public morality, public policy and State security.

The principle of non-extradition of citizens is more often a state policy regarding its nationals, then a right that the State provides for its nationals. Republic of Macedonia before several years applied the rule of non-extradition of citizens as a state policy rather than human rights. This provision, however, made huge problems because criminal offenders were protected and there was no possibility of their extradition for extraditable crimes committed in other states. In order not to make confusion between the principle of non-extradition of nationals and guaranteed human rights, Republic of Macedonia made a deviation from the no exception rule by adopting the Amendment XXXII of the Macedonian Constitution (Amendment XXII to Const. 2011) with which extradition is allowed on the basis of ratified bilateral agreements and with a court decision. With this amendment, dual citizenship will no longer be an obstacle for extradition and avoiding justice.

MACEDONIAN CHANGES IN LEGISLATION TOWARDS DUAL CITIZENSHIP AND ALLOWING EXTRADITION

Before recent changes, the judicial system of the Republic of Macedonia allowed criminals with dual citizenship to live as free citizens in other states, although they were persecuted and wanted to serve sentences for committed crimes. On this way, the criminals used the weaknesses of the system and with having dual citizenship they managed to escape justice. Non extradition of citizens or the 'nationality exception' rule was not only a common practice for the Republic of Macedonia, but also all Western Balkan countries where dual citizenship was used to avoid extradition allowed and prescribed by the constitution, so this means that the legal system allowed the criminals with dual citizenship to leave as free citizens, although there were international arrest warrants against them.

The Constitution of the Republic of Macedonia contained the most restrictive provision related to extradition of the country's nationals which meant that the country had a full nationality exception engrained in its Constitution (Dzankic 2013, 12).

Dual citizenship is one of the means that criminal offenders use in order to avoid enforcement of criminal and legal sanctions and on that way the non exceptional rule was compromised. Constitutional changes are not a way for limiting or decreasing the basic human rights and liberties of citizens, but an opportunity to protect and raised them to a higher level. Every offender who committed a crime should be subjected to criminal responsibility, so the dual citizenship must not be used as an instrument to avoid criminal responsibility and appropriate sanctions in accordance with the law. The purpose of these constitutional changes was to decrease, but not to eliminate the constitutional obstacle for extradition of citizens to other states. With this a possibility could be opened for concluding bilateral extradition agreements not only with the Balkan countries, but also with other countries in the world. With the prescribing of the extradition of nationals, the countries usually provide an opportunity for prosecuting nationals for crimes committed abroad, by giving the national law an extraterritorial competence. This principle is known as the active personality principle and its main justification is in the fact that jurisdiction over crimes committed by nationals abroad is necessary to prevent such crimes and criminals from escaping prosecution. Thus, the active personality principle, seen as a remedy against the complete frustration of criminal justice and the impunity of an offender, usually follows the nationality exception rule. The number of criminal offenders who escaped justice from Republic of Macedonia should not be underestimated. The suspected criminals' freedom is secured, oddly enough, by official documents. Thanks to their dual citizenship, criminals from the Balkans can simply cross the border to another country whose passport they hold whenever they fear imminent arrest. They might still be detained there, but they may not be delivered across the border since the transfer of citizens to foreign law-enforcement agencies was prohibited.

From the above mentioned a question can be raised why there are several cases of famous criminal offenders who are not still extradited to Republic of Macedonia although all preconditions required by the law and international and bilateral agreements were fulfilled and all necessary guarantees have been given that their human rights will not be violated. What will happen with the human rights of the victims of those criminal offenders who violated their human rights while committing a crime? Is Republic of Macedonia ready to go step ahead and conduct the extradition procedure till end?

HOW THE LAW ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS GOVERNS THE PROCEDURE OF EXTRADITION

The main purpose why the new Law on International Cooperation in Criminal Matters was enacted is the necessity for international cooperation between states in preventing crime and the fact that procedures which were expensive and slow will be replaced with simpler, efficient and more economic ones. The Republic of Macedonia, more precisely the Ministry of Justice, has implemented continuous reforms which will enable the effective application of the EU measures in this area. The ratification process is completed for all the relevant international instruments, conventions and their additional protocols in the area of international cooperation in criminal matters adopted by the Council of Europe. A solid national legal framework is established which aims to advance the cooperation in the area of criminal matters, considering the provisions of the Law on International Cooperation in Criminal Matters (Ministry of Justice 2013, 3). The Law has exceptional importance and represents a precondition for successful cooperation between the Republic of Macedonia and the European Union's Judicial Cooperation Unit (EUROJUST 2013). The discussion on the establishment of a judicial cooperation unit was first introduced at a European Council Meeting in Tampere, Finland, on 15 and 16 October 1999, attended by heads of state and government. This meeting was dedicated to the creation of an area of freedom, security and justice in the European Union, based on solidarity and on the reinforcement of the fight against trans-border crime by consolidating cooperation among authorities. To reinforce the fight against serious organized crime, the European Council, in its Conclusion 46, agreed that a unit (Eurojust) should be set up, composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to their own legal systems. On 14 December 2000, on the initiative of Portugal, France, Sweden and Belgium, a provisional judicial cooperation unit was formed under the name Pro-Eurojust, operating from the Council building in Brussels. National Members were then called National Correspondents. This unit was the forerunner of Eurojust, the purpose of which was to be a sounding board of prosecutors from all Member States, where Eurojust's principles would be tried and tested. Pro-Eurojust formally started work on 1 March 2001 under the Swedish Presidency of the European Union.

The cooperation between the Republic of Macedonia and EUROJUST and ratification of the European Convention on Mutual Assistance in Criminal Matters by the Republic of Macedonia in 1999 (CETS No.030 1959) was a solid base and inevitable component for the new Law on International Cooperation in Criminal Matters together with the incorporated provisions from the European Convention on Extradition (CETS No.024 1957) and the additional protocols which have been ratified by the Republic of Macedonia. The Law was enacted on 14 September 2010 and started to implement on 01 December 2013. According to the Law, in Article 3 it is prescribed: "international cooperation will be given in all procedures connected with criminal offences in the time of submitting the request for international cooperation in criminal matters to a judicial organ to the requesting state. International cooperation shall be given in the procedures before European Court of Human Rights, International Criminal Court when that is determined with an international agreement" (Article 3 2010).

The law contains provisions regarding the human rights standards indicating that the person whose extradition is sought may not be prosecuted, judged or subjected to any sentence or punishment or to any other measure for limiting his liberty or extradited to other state for criminal offence committed before the extradition unless the law otherwise provides. Regarding the death penalty, it is prescribed that “extradition is not permitted for criminal offences which under the law of the requesting state are punishable by the death penalty, unless the requesting state gives assurances which are considered sufficient that the death penalty will not be imposed (Article 55 2010).

Above mentioned provisions are just part of what the law should contain, having in mind the fact that the line between extradition and human rights is very thin and often subject to various confusions and misunderstandings. The question that everyone is asking – Should criminal offenders enjoy human rights?

Although criminal offenders broke the law and violated the guaranteed human rights of the victim, they still enjoy some of the guaranteed human rights from the international conventions that have been incorporated in the legal systems of many states such as the right not to be subjected to torture or inhuman and degrading treatment; right to appeal and right to a fair trial. Right to liberty and security does not apply to the criminal offenders because in most of the cases they are detained in prison while waiting for extradition.

The duty of every state is to protect its own citizens and their guaranteed human rights, but also to be sure that criminal offenders will be extradited and will receive proper sentence in the state where they committed the crime. It is clear that the state should not neglect the human rights of the criminals because they still possess inviolable rights guaranteed with the international conventions, but also every state must never forget what is her duty first of all, among other things, and that is fighting against international criminals, extraditing the criminal offenders and protecting the victims and providing them with their guaranteed human rights that have been violated by the criminal offenders.

THE INSTITUTION OF EXTRADITION AS AN INSTRUMENT FOR INTERNATIONAL COOPERATION BETWEEN THE REPUBLIC OF MACEDONIA AND OTHER STATES

The time when each country praised its own system of criminal repression and avoided cooperation with other countries has long past. Extradition is just one way of cooperation between states on an international level with the sole purpose to extradite a suspected or convicted criminal offender in order to be tried for a committed criminal offence or to serve the sentence determined by the court in a legitimate procedure. The possibility of handing over an accused person for trial to another State wishing to prosecute the individual offers an opportunity to the State on whose territory or under whose authority the person is, to fulfill its obligations to prosecute or to extradite. The role the obligation to extradite or prosecute plays in supporting international cooperation to fight impunity has been recognized at least since the time of Hugo Grotius, who postulated the principle of *aut dedere aut punire* (either extradite or punish). The effective fulfillment of the obligation to extradite or prosecute requires necessary national measures to criminalize the relevant offences, establishing jurisdiction over the offences and the person present in the territory of the State, investigating or undertaking primary inquiry, apprehending the

suspect, and submitting the case to the prosecuting authorities or extraditing, if an extradition request is made by another State.

The legal frame of the international judicial cooperation of the Republic of Macedonia consists of: national criminal legislation, bilateral agreements for international legal cooperation (which the Republic of Macedonia has signed with a large number of states) and the ratified international conventions in this area (which are an integral part of the legal system of the Republic of Macedonia.) In this connotation it must be mentioned that after the dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s, Republic of Macedonia as one of the six republics had inherited the ratification of several agreements and international conventions which were signed and ratified by the former Yugoslavia. Although the process of bringing a new legislation started, some of the laws from the former Yugoslavia were taken over as legal acts inherited from the previous federation. According to the Constitutional Law on Implementation of the Constitution of the Republic of Macedonia, Article 5 prescribes that: “the existing federal legal acts and document shall be taken over as legal acts and official documents of the Republic with the competencies of the bodies determined by the Constitution of the Republic of Macedonia. Pending the conclusion of an agreement among the sovereign states of the Socialist Federal Republic of Yugoslavia, the Republic of Macedonia may entrust the implementation of specific legal acts to the federal bodies” (Article 5 1991).

Bilateral agreements have significant influence in cooperation between states with a desire to prevent all forms of transnational crime and to raise extradition on a higher level as the best effective way for extradition of criminal offenders from the requested to the requesting state. The Republic of Macedonia has concluded several bilateral agreements in the field of extradition with the Republic of Slovenia, the Republic of Albania, Bosnia and Herzegovina, Montenegro, the Republic of Serbia, Republic of Kosovo and Croatia, but only the agreements concluded with Montenegro, Serbia and Croatia contain provisions for mutual extradition of own citizens. The Republic of Macedonia has concluded an Agreement for legal assistance in civil and criminal matters with Republic of Turkey in 1997. The latest bilateral agreement in the field of extradition, which Republic of Macedonia has concluded and signed, was with the Republic of Italy on 25 July 2016. This agreement contains provisions for mutual extradition of own citizens.

With the rest of the states from Europe, Israel, Korea and South Africa, the extradition procedure is conducted in accordance with:

1. European Convention on Extradition (opened for signature in Paris on December 13, 1957 and entered into force on April 18, 1960);
2. First Additional Protocol to the European Convention on Extradition and
3. Second Additional Protocol to the European Convention on Extradition.

The Republic of Macedonia signed and ratified the European Convention on Extradition, the First and the Second Additional Protocols in 1999 published in the Official Gazette of the Republic of Macedonia No.23/99 and in the same time made reservations towards the convention and the two additional protocols. The first reservation was made towards Article 4 of the Constitution of the Republic of Macedonia, which does not allow the extradition of the citizens of the Republic of Macedonia, the provisions of this Convention shall only apply to the persons which are not citizens of the Republic of Macedonia, and the preceding statement concerns Article (s) 6. Reservation was made also,

towards Article(s) 1 where it is stated that the Republic of Macedonia shall not agree to surrender the person claimed, if this person is charged by an extraordinary court or in cases where the surrender is requested for the purposes of executing a sentence, safety measure or correctional measure that was passed by such a court. Regarding Article(s) 12 it has been declared that: “Even in the cases where the final sentence or the arrest warrant are passed by the competent authorities in a country which is Party to this Convention, the Republic of Macedonia reserves the right to refuse the requested surrender, if an examination of the case in question shows that the said sentence or arrest warrant are manifestly ill-founded” (Reservations to ECE 1999). The last reservation concerns the Article 18 where it was stated that: “In the event that the person claimed has not been taken over by the requesting Party, on the appointed date, the Republic of Macedonia reserves the right to annul the measure of restraint imposed on that person” (Reservations to ECE 1999).

The Republic of Macedonia signed the Third Additional Protocol to the European Convention on Extradition on November 10, 2010 and ratified it on November 21, 2013. After this, the protocol was published in the Official Gazette of the Republic of Macedonia No.135/2013. The Third Additional Protocol signed and ratified by the Republic of Macedonia entered into force on March 1, 2014. Regarding the Fourth Additional Protocol to the European Convention on Extradition, the Member States of the Council of Europe signed it in Vienna on September 20, 2012 and entered into force on June 1, 2014.

PROTECTION OF HUMAN RIGHTS AS A BASIC CONSTITUTIONAL PRINCIPLE IN CONTEXT OF EXTRADITION

Basic human rights and freedoms of citizens are acknowledged by international law and determined with the Constitution as one of the fundamental values upon which is based the constitutional order of the Republic of Macedonia. Human rights and freedoms are realized upon the Constitution. The law should provide their realization and that can only be determined with accomplishment of some rights and freedoms, when that is provided by with the Constitution and when there is a need for their realization. The Constitution does not allow, with law, or any other act, limitations to be provided on human rights and freedoms. They can only be limited in cases determined by the Constitution.

Each country is left free to adopt the institutional arrangements and political system most congenial to it; those which best reflect its people’s needs and its national traditions. All that is demanded is respect for certain minimum standards concerning relations between the citizen and the state, respect for certain human rights and essential freedoms (Cassese, 1990). Extradition can and should be realized only when there is substantial ground and enough evidence that the criminal offender committed the criminal offence and only if this is supported with international instruments and made upon a legal basis. Although extradition procedures conflict with international human rights, the courts, especially the European Court of Human Rights guarantee that the individual rights are respected. The newest form that is mayor obstacle for conducting extradition is the death penalty. No human rights convention outlaws the death penalty, but protocols to the ICCPR and ECHR do that (Dygaard and Van Wyngaert 1998, 196).

Regarding the respect of human rights and implementation of international instruments, the Republic of Macedonia in 1995 has signed the ECHR and subsequently the Protocols toward the ECHR.

The latest novelties concern the fact that the Republic of Macedonia on 17 June 2016 has signed the Protocol No.15 to the ECHR. What is important about this Protocol concerns to the following changes to the Convention: adding a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the Preamble of the Convention; shortening from six to four months the time limit within which an application must be made to the Court; amending the 'significant disadvantage' admissibility criterion to remove the second safeguard preventing rejection of an application that has not been duly considered by a domestic tribunal; removing the right of the parties to a case to object to relinquishment of jurisdiction over it by a Chamber in favor of the Grand Chamber; replacing the upper age limit for judges by a requirement that candidates for the post of judge be less than 65 years of age at the date by which the list of candidates has been requested by the Parliamentary Assembly.

THE ROLE OF THE REPUBLIC OF MACEDONIA IN PROTECTING THE INVIOLEABLE HUMAN RIGHTS

Republic of Macedonia attaches priority importance to the protection, respect for and promotion of human rights and freedoms. In this context, the Republic pursues the strategic commitment of ensuring, both in law and practice, effective respect for international obligation which were assumed and for domestic legal norms in that field.

The legal system of the Republic of Macedonia regulates the relations between domestic and international law envisaging that international agreements ratified in accordance with the Constitution are an integral part of the domestic legal order and may not be amended by law, thus placing international agreements ratified in pursuance with the Constitutional hierarchically above national law (Dzankic 2013). The above mentioned applies to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred as ECHR) signed in Rome on 04 November 1950 and entered into force on 03 September 1953. The main purpose for signing the Convention was the maintenance and further realization of human rights and fundamental freedoms by the Council of Europe. The Republic of Macedonia signed the ECHR on 09 November 1995 and it entered into force on 10 April 1997. The provisions from ECHR are incorporated in the Constitution of the Republic of Macedonia into the Chapter about Fundamental freedoms and rights of the individual and the citizen. The first provision referees to prohibition of discrimination and to the fact that citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of gender, race, color of skin, national and social origin, political and religious conviction, property and social status. Citizens are equal before the Constitution and the law (Article 9 1991). Similar provision regarding prohibition of discrimination is contained in the ECHR.

In Article 10 of the Constitution it is stated that human life is inviolable. Capital punishment shall not be imposed on any grounds whatsoever in Republic of Macedonia (Article 10 1991). This provision from the Constitution corresponds with Article 2 of the ECHR. In Article 11 of the Constitution it is provided that human physical and moral dignity is inviolable. Any form of torture, or inhuman or humiliating treatment or punishment is prohibited and similar provision it is contained in Article 3 of ECHR where prohibition of torture is elaborated.

The right to liberty and security of the person is established under Article 12 of the Constitution, which guarantees that the right to freedom is inviolable. No person can be restricted in freedom except by a court decision or in cases and procedures determined by law. The person apprehended or detained must be immediately informed of the reasons for their apprehension or detention as well as on their legal rights and must not be forced to make a statement. The person has the right to defense counsel in the police and court procedure. Detained persons must be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention and the court will, without any delay, decide on the legality of the detention: a person unlawfully or without any grounds detained apprehended or convicted has the right to legal redress and other rights determined by law (Article 13 1991).

Foreign nationals in the Republic of Macedonia enjoy rights and freedoms guaranteed by the Constitution, under conditions set forth in law and international agreements. The extradition of foreign nationals can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. Foreign nationals cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences (Article 29 1991).

In the Constitution it is also provided that the freedoms and rights of the individual can be restricted only in cases determined by the Constitution. The restriction of freedoms and rights cannot be applied to the right to life, the prohibition of torture, inhuman and humiliating treatment and punishment and the legal determination of punishable offences (Article 54 1991).

As regards the protection mechanisms in case of violation of the rights guaranteed under the ECHR, both in terms of deprivation of freedom and in terms of violations of any other rights, there is a guarantee for the protection of the fundamental rights and freedoms through a procedure, regulated by law, before the regular courts in the Republic of Macedonia, as well as before the Constitutional Court, the National Ombudsman, and before the Survey Committee for Human Rights at the Parliament of the Republic of Macedonia.

The internal legislation of the Republic of Macedonia guarantees the fulfillment of the obligation of the state to ensure effective implementation of the provisions contained in the ECHR. Article 116 of the Criminal Code (2004) regulates the application of the criminal legislature to everyone who commits a crime on the territory of the Republic of Macedonia.

ARE ASSURANCES FOR PRETECTING HUMAN RIGHTS ENOUGH TO CONDUCT / AVOID EXTRADITION?

It is generally accepted that states have no general obligation to surrender a person who is within their territory. Because of this, many states have signed bilateral (between two states) and multilateral (between several states) extradition treaties agreeing to transfer “fugitive offenders” in certain circumstances. States also use non-binding schemes and agreements for the same purpose. Extradition may still be possible even where there is no treaty or agreement between two countries, but it will depend on the law of the requested state. In the absence of an extradition treaty, surrender of a claimed person can be made on


the principle of comity founded on the basis that it is not in the interest of the international community such serious crimes of international significance to stay unpunished.

Reliance on diplomatic assurances has been a longstanding practice in extradition relations between states, where they serve the purpose of enabling the requested State to extradite without thereby acting in breach of its obligations under applicable human rights treaties. Their use is common in death penalty cases, but assurances are also sought if the requested State has concerns about the fairness of judicial proceedings in the requesting State, or if there are fears that extradition may expose the wanted person to a risk of being subjected to torture.

When inviolable human rights are engaged such as the right to life, prohibition of torture, right to a fair trial and many others, in those cases assurances for conducting an extradition are not enough because the risk of violation of those rights is higher than the desire to act in accordance to the law and to extradite a criminal offender. For example, if the extraditable offence potentially attracts the death penalty, most states that prohibit capital punishment will refuse to extradite unless they receive assurances that the subject will not be sentenced to death or, if imposed, the death penalty will not be carried out. Such assurances are specifically required in a number of extradition treaties and domestic legislation, and follow from some State's obligations under separate human rights treaties.

As mentioned above, it will also be a violation of the prohibition to torture to extradite a person to a state where criminal offender faces a real risk of such treatment. This is provided in a number of international human rights treaties (directly or indirectly). In some cases when there is a possibility of violation of the guaranteed human right concerning the right to a fair trial, the requested state may deny the extradition request if there is a even the smallest possibility that the fair trial may be denied even if the requesting state gives a strong assurances that the criminal offender will have a fair trial after his extradition.

CONCLUSION

The development of human rights linkage to extradition is a new field of law and it has been actualized these past decades. It is common sense that a general obligation of states is to protect rights and freedoms enshrined in international conventions which includes respect for all individuals in their territory. If there is a real risk of "irreparable harm", states are obliged not to extradite. This paper tried to explain the concept of extradition in the internal legislation of the Republic of Macedonia and brought the institute of extradition in correlation to possible human rights violations. A tension between extradition and human rights should be eliminated by achieving a compromise between extradition as an instrument for inter-state cooperation in order to bring criminal offenders before justice and human rights as protector of the offender's rights. 

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