PalArch's Journal of Archaeology of Egypt / Egyptology

THE LATEST TRENDS OF EXTRADICTION AND THE PROBLEM OF IMPLEMENTING THEM IN THE POST-SOVIET SPACE

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Abdulloev Parviz Sadulloevich, Buni Hisorak. The Latest Trends Of Extradiction And The Problem Of Implementing Them In The Post-Soviet Space--Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(10), 3462-3479. ISSN 1567-214x

Keywords: International Cooperation, Extradition Of Persons, Post-Soviet Countries, International Treaties, Criminal Procedural Legislation, Foreign State

ABSTRACT

All the post-Soviet states adopted a codification act on criminal procedure and improved the regulation of international cooperation in the extradition of persons within the framework of their national legislation, yet there are certain modern trends in the developed international cooperation on extradition among the post-Soviet states. A comprehensive disclosure of the legal nature, development of a more effective mechanism, identification of general development trends and formulation of conclusions and proposals for improving the institution of extradition is needed, based on comparative legal, concrete historical, and legal dogmatic methods, and on synthesis, deduction and induction, as well as a systemic and structural approach. There is a tendency to constantly improve the legal regulation of this issue; the present research concludes it is necessary to expand those trends that give more possibilities for extradition of persons to a foreign state.

Keywords: international cooperation, extradition of persons, post-Soviet countries, international treaties, criminal procedural legislation, foreign state.

INTRODUCTION

In the 21st century, the trend towards international cooperation in criminal matters is becoming inevitable. States strive for cooperation, aiming to strengthen security, fight crime, protect human rights, etc.. However, the norms on international cooperation in the field of extradition, which first appeared in the ancient world but developed mainly in the 18th and 19th

centuries, do not meet modern international standards, values, opportunities and common threats. To increase the protection of common values, their effectiveness and accessibility, it is necessary to optimize international cooperation in criminal matters.As noted by E.V. Bykova, V.S. Vyskub and T.A. Reshetnikova, "When the world is changing under the influence of objective and subjective factors, there is a tendency towards a higher level of interaction between international and domestic law at all stages of their implementation" [1].

It is unlikely that 3000 years ago, when separate norms on extradition appeared, all the persons who had committed general criminal acts were searched for and transferred. The author of the present research believes that, regardless of the norms stipulated in international documents, extradition was more of a political rather than legal nature. Attempts to search for and extradite all persons who committed a general criminal act appeared in the 21st century, and the rules on non-extradition on some grounds, and many other bureaucratic barriers result in complex procedures and huge requirements for the required documents and evidence. For instance, modern states face such problems as non-extradition and postponement of extradition, including in the post-Soviet states.

MATERIALS AND METHODS

The present research uses the criminal procedural legislation of the post-Soviet countries, which regulates specific aspects of international cooperation in criminal matters. During the research, international treaties, international advisory and other normative acts were studied.The research uses empirical and theoretical scientific methods: observation, including studying the practice of sending and executing instructions in international cooperation in criminal matters, comparative legal, concrete historical, and legal dogmatic methods, ascent from the abstract to the concrete, statistical and formal analysis, synthesis, deduction and induction.

RESULTS

Based on ‘free movement’, a person who committed a crime travels from one state to another, hides their property, money, real estate, etc. abroad, yet to protect their sovereignty, states limit the possibilities of international cooperation in criminal matters, although, on a reasonable basis, it is possible to fill in many gaps and to pull down barriers through targeted legal regulation in interaction in criminal cases.A person who has violated fundamental human rights should not receive refugee status from states – thus further complicates their extradition to states that prosecute them for crimes. The protection of human rights and the fight against crime complement each other: they cannot be opposed, and the so-called ‘philosophical mechanism’ cannot be created.

[1] E.V. Bykova, V.S. Vyskub, T.A. Reshetnikova, ‘Improving the regulation of international cooperation in the field of criminal justice’, (2014) 4(15) *Criminalist Library* 301

Both tasks are applied: the fight against crime is one of the mechanisms for protecting human rights; the protection of human rights is protection from offenses, including crimes. A balance must be maintained, and in no case should it be upset in favor of one side or the other. The provisions of international treaties of post-Soviet countries on the protection of human rights and on extradition provide grounds for a reasonable understanding and action to resolve conflict issues (gaps) between for effective cooperation. A broad interpretation of human rights without taking into account individual situations in specific cases further leads to new problems in the framework of international cooperation (the principle of effectiveness is the key one in interpreting international human rights treaties; it is most widely used and needs no explanation. It is sometimes very difficult for the state to adapt its obligations (arising from human rights treaties) to the entrenched national legal institutions and doctrines. Moreover, establishing the exact normative content of such obligations is to be guided by the principle of effective (and dynamic) interpretation, with the paramount goal of effective protection of human rights and freedoms. Finally, when international human rights bodies apply the principle of effective interpretation (in particular, dynamic interpretation), it does not exclude the eventual exceeding of the original will of the parties to the treaty)[2].

The inevitability of punishment and fairness means preventing the perpetrator from exploiting gaps in international treaties, and legal and bureaucratic barriers. States should not seek their political and economic interests through refusal to extradite individuals, which is well exploited by the perpetrators. Short-sighted politicians should not promote impunity for the perpetrator.The simplified procedure for extradition was further developed and improved in post-Soviet countries. In this direction, the post-Soviet countries can make good use of each other's legislation and law enforcement practice, including the introduction of a simplified extradition procedure by harmonizing and unifying the norms of criminal procedure legislation. Applying the simplified procedure for extradition to implement international cooperation in criminal matters is effective. Within the framework of this procedure, the legal admissibility of extradition is not checked, there is no need to provide a formal request for extradition and documents that contain the grounds for the alleged postponement of extradition, and this speeds up the process of extradition within the framework of international cooperation in criminal matters in the post-Soviet space.The extradition of persons has a criminal, criminal-executive and criminal-procedural nature. Besides, this institution largely depends on the norms of international and foreign law. Therefore, harmonization and unification of norms on extradition is carried out constantly and gradually. Along with this, the international community strives to create ‘uniform norms’ and ‘uniform rules’ for extradition, and implementation of the norms of international treaties and harmonization of national legislation in the international, regional and sub-regional scale are of great importance

[2] L. Huseynov, ‘Features of the interpretation of international treaties on human rights’, (1999) 2 Belarusian Journal of International Law and International Relations 3, 5

here.Unification and harmonization of the rules on extradition is carried out within the framework of not only the criminal process but also the criminal and criminal-executive law. Some international treaties played an essential role here, for instance, Minsk Convention, the Model Code of Criminal Procedure of the CIS in the CIS countries, the European conventions for the protection of human rights and extradition in the Baltic countries, Russia, Ukraine, etc., acts of the European Union in the Baltic countries. In addition, as former fraternal republics, they make good use of the practice of legal regulation of one another when improving the rules on extradition. At least, the rules on extradition to foreign states have numerous similarities.

DISCUSSION

Implementation and protection of human rights in international cooperation in criminal cases.

A common world value, which the constitutions of many countries recognize as the highest, is the person and their rights and freedoms, which is extremely important in the field of international cooperation in criminal cases. In accordance with the norms of law, a person, regardless of whether they have committed a crime or not, remains a person, and their rights and freedoms are to be protected. The legal status of a person and their freedoms are provided for in international documents, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights of December 16, 1966, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (at the regional level), etc.; these have provisions for the protection of human rights and freedoms.In cooperation regarding extradition, it is necessary to interpret the norms of these international treaties *de facto*, not *de jure*, which is a reason for the non-interaction of states. For instance, in accordance with Part 2 of Art. 13 of the Universal Declaration of Human Rights (adopted by Resolution 217 A (III) of the UN General Assembly of December 10, 1948), “everyone has the right to leave any country, including their own, and return to their country”. However, one of the specific characteristics of extradition – the forced transfer of a person from one state to another (if we interpret the rule on extradition of persons as is) contradicts the above provision of the declaration. In the practice of some states, this creates difficulties in the ratification of international treaties on extradition, in cooperation between states on this issue and the possibility of using this provision when sending a ‘reasoned and substantiated’ decision. For example, in the Czech Republic, this issue was discussed for a long time during the ratification of the framework decision: it was believed that the European arrest warrant contradicted the Czech Constitution and the Declaration of Human Rights, until the decision of the Constitutional Court was adopted as a result of the appeal[3].

In accordance with Paragraph D, Part 3 of Art. 14 of the International Covenant on Civil and Political Rights of December 16, 1966 "everyone has

[3]http://www.radio.cz/ru/rubrika/radiogazeta/evropejskij-order-na-arest-ne-protivorechit-cheshskoj-konstitucii-i-deklaracii-prav-cheloveka

the right ... to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing." If we take this provision as a basis, then no arrest warrants in extradition cases can be issued if the accused is not involved. The accused has the right to participate and demand changes in the preventive measure against them. If the accused hides from the court and does not participate in the trial, then the trial *in absentia* is considered a violation of the accused's right, which is paradoxical from the point of view of interpretation as is.According to Part 1. Art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "no State Party shall expel, return ('refouler') or extradite any person to another State if there are serious grounds for believing that he the use of torture may threaten there. " The main disadvantage of the provisions of international treaties on the protection of human rights is the provided dispositive rules on determining the circumstances, which enable the requested party to determine the situation itself. If there is no trust or mutual understanding in any situation, she justifies her decision in terms of the provisions of the convention on extradition.The provisions of international treaties on the protection of human rights and freedoms are universal. Some researchers try to separate the protection of the rights of citizens proper from the general principle of protection of human rights, which does not correspond to the modern trend of protecting human rights when extraditing persons. For example, according to P.V. Fadeev, "sovereign states should constantly and to a greater extent secure the rights of their citizens in interstate treaties on legal assistance, as well as develop international cooperation in order to further promote and protect these rights and freedoms"[4].

Most often in post-Soviet countries extraditing involves the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The countries of Central Asia are not parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the European Convention), and the jurisdiction of the European Court of Human Rights does not operate in Central Asia. However, the role of the European Court of Human Rights (ECHR) in the unification of the norms of criminal and procedural law is significant on the European continent; its decisions help create uniform criminal procedural norms. The judgments of the ECHR are passed according to the rules that are established in the European Convention. The same rules determine their legal significance.The countries of Central Asia have treaties on international legal assistance and extradition of persons in criminal cases with states that are parties to the European Convention and which are subject to the jurisdiction of the European Court of Human Rights, for example, with the Russian Federation, Ukraine, Turkey, etc. In cases a request for extradition does not comply with the provisions of the European Convention, a State party is not obliged to extradite a person.In recent years, the number of Central Asian citizens appealing to the European Court of Justice against the parties to the European

[4] P.V. Fadeev, 'Problems of ensuring the rights of the individual in international cooperation in criminal matters' (2013) 1 *International criminal law and international justice* 7

Convention has been increasing, and one of the reasons for these appeals is a request not to extradite them to the countries of Central Asia.In all the so-called "extradition cases" when the European Court prohibits extradition of persons to Central Asian countries, there is: 1) violation of Art. 5 of the European Convention or 2) the threat of being subjected to torture and inhuman treatment (Art. 3). In each case, the Court noted that on the basis of reports of international and non-governmental organizations in a particular Central Asian country, it "did not find significant data that would force us to re-evaluate the situation for the better". On the one hand, the authorities of the Central Asian countries themselves do not deny the facts of torture by law enforcement agencies [5] and are trying to establish at the legislative level norms on the prohibition of torture, etc. On the other hand, the European Court has been criticized in recent years. B. Bowring, examining the decision of the European Court in the case "Kononov v. Latvia", notes that "the Strasbourg Court ... increasingly considers itself obliged to deal with highly *politicized issues* and complex problems of international law"[6] (italics supplied).In the countries of Central Asia, the criminal law principle of the inevitability of responsibility is in force – according to it, every person who committed a crime must bear criminal responsibility. On this basis, the state should strive to ensure that the case of each accused is resolved fairly, and that the person who committed the crime should be criminally liable. The European Court does not investigate the case, it only determines whether the applicable rules or actions of the state are in accordance with the European Convention; the court in its decision does not determine whether the indicated persons committed a crime or not. However, the crimes committed are of great concern to the countries of Central Asia and their partners in international cooperation – the Russian Federation and Ukraine. If this continues, the decisions of the ECHR will be treated in Central Asia based on legal nihilism. Any person who has committed crimes in Central Asia can flee to a country under the jurisdiction of the ECHR and apply to the ECHR claiming the 'threat of torture', and this is enough reason for refusing to extradite persons to the countries of Central Asia.In sum, the countries of Central Asia should organize their law enforcement practice properly: the law should be applied in practice without unnecessary interpretation. Nevertheless, one should not impose responsibility on the Central Asian states that does not follow from an international treaty obligation, and use some standards as pressure on one or another state. The Central Asian countries should (at the international level and on a contractual basis) clarify the fate of those persons who are not extradited to the requesting party with their partner for international cooperation in criminal matters.As duly noted by the Azerbaijani internationalist N.A. Safarov, "the factor of human rights in the process of extradition is undoubtedly paramount and,

[5] Report of the Working Group on the Universal Periodic Review. Tajikistan. 2011. Doc. UN A/HRC/19/3; Report of the Working Group on the Universal Periodic Review. Tajikistan. 2012. Doc. UN A/HRC/19/3/Add.1.

[6] B. Bowring, 'Ruling of the Grand Chamber of the European Court of Human Rights in the case "Kononov v. Latvia" (17 May 2010): Is the Russian Federation right in its understanding of the relationship between politics and international law?' (2012) 2 *International justice* 83

certainly, should be taken into account when deciding on the issue of extradition. However, it would hardly be correct if the possibility of violation of any right from the extensive catalog of human rights could be considered as grounds for refusing to extradite persons. Therefore, in the context of the problem under consideration, it is necessary to keep in mind not "human rights in general" as a means of blocking a request for extradition, but certain, specific rights, the real possibility of violation of which may be the basis for refusing extradition"[7].

In the event of a real threat of human rights violations, states should cooperate in a different format - on the basis of the principle "either extradite or punish yourself" (*aut dedere, aut judicare*). Cooperation in the framework of the criminal process is necessary, first, from the point of view of the protection of human rights.

Simplified procedure for extradition in criminal cases within the framework of international cooperation of post-Soviet countries

Timely investigation of a crime and the adoption of a final decision in a criminal case are important factors in the development of criminal procedural policies of states.

The introduction of a mechanism for a simplified extradition procedure is based on the general provisions of international human rights treaties. At present, accelerated and simplified rules in the pre-trial and judicial stages are of great importance in post-Soviet countries. The purpose of the introduction of accelerated proceedings and simplified rules is to investigate and resolve a criminal case as soon as possible (modernization of the post-Soviet legal space through various legal technologies gave birth to various models of accelerated proceedings in the criminal procedural legislation of the former Soviet republics. Differences in social claims and mental approaches led to a number of conceptually new models of accelerated proceedings for some of these countries)[8]. It should be noted that the attitude of the post-Soviet countries to the simplified criminal proceedings is not uniform. The 'epicenter' of consideration of cases in simplified criminal proceedings is an admission of guilt, which depends on the will of a person, i.e. they voluntarily plead guilty. Simplified extradition in the framework of international cooperation in criminal matters has the same meaning – a clearly expressed consent and its submission in writing are required. At this stage, questions of admission of guilt are not resolved. The role of the United Nations in establishing simplified extradition in international cooperation in criminal matters is enormous. The Model Treaty on Extradition of December 14, 1990 also provided for a simplified extradition procedure[9]. According to Art. 6 of this treaty, the requested State, if the simplified extradition procedure is not prohibited by its

[7] N.A. Safarov, 'Extradition and Human Rights: Finding the Optimal Balance' (2007) 1 *Russian Journal of Law* 32

[8] O. V. Kachalova, 'Accelerated proceedings in the criminal process of post-Soviet states' (2015) 4 *International criminal law and international justice* 11

[9] Model agreement for extradition. Adopted by General Assembly resolution 45/116 of 14 December 1990. URL: // http://www.un.org/ru/documents/decl_conv/conventions/extradition.shtml

legislation, may authorize extradition upon request for provisional arrest, provided that the person in respect of whom the request is made *clearly expresses consent* with the competent authority. This provision of the Model Treaty on Extradition is understood as one of the key conditions of the simplified extradition procedure for the person in respect of whom the request was made and who *clearly expresses consent* to the competent authority, i.e. the consent of the person is mandatory for simplified extradition.European law in comparison with international law in modern times plays a dominant role in optimizing the institutions of the criminal process.The Framework Decision of the Council of the EU "On the European arrest warrant and transfer procedures between the Member States" of 13 June 2002, which is in force from 1 January 2004, is of great importance in the simplified rules for extradition. The EU replaced the relevant provisions of international legal acts in the field of extradition without prejudice to their application by third countries. The peculiarity of this type of simplified extradition procedure is as follows: mutual recognition of court decisions and documents and evidence, definition of types of crimes, rejection of the principle of double criminalization by harmonizing the legislation of the participating countries, reasonable understanding and use of mechanisms for protecting human rights[10]. The number of arrest warrants increased in recent years. The 1957 Council of Europe Convention on Extradition continues to regulate relations between EU states and other countries regarding extradition. The simplified procedures for the transfer of persons are only applicable between the states of the European Union[11].

Three post-Soviet countries – Latvia, Lithuania and Estonia – joined the European Union on May 1, 2004, i.e. in the same year that the Framework Decision took effect (as noted by A.G. Volevodz. "... The European Union has become a conduit for replacing the classic procedural regulation of the institutions of international cooperation in criminal proceedings with a new one. We are talking about the creation and implementation of European orders into the practice of law enforcement agencies and courts of united Europe ... ")[12]. The national criminal procedure legislation of these countries provides for a simplified procedure for extradition in the implementation of international cooperation.At the national level, Estonian criminal procedure legislation has its own peculiarities when dealing with issues of international cooperation in the field of criminal procedure. The Estonian Criminal Procedure Code was adopted on February 12, 2003 and entered into force on July 1, 2004. Section 10 'International Cooperation' regulated (in Chapter 35) issues of international cooperation in the field of criminal proceedings, covered in Art. 397-414. This Code does not divide the issues of international cooperation on institutions

[10] E.A. Klimova, 'Simplification of the extradition procedure: the experience of the European Union' (2010) 1 *International criminal law and international justice* 26, 28

[11] S.S. Nesterenko, 'Trends in the development of the institution of legal assistance in criminal cases in the XXI century' (2010) 2 *Almanac of international law* 290

[12] A.G. Volevodz, 'International cooperation in the field of criminal justice – lessons of history and some problems of reforming' (2014) 6 *Criminalist Library* 285

into separate chapters, as in other Codes of post-Soviet countries, for example, in Russia[13] and Tajikistan [14]. After several additions and amendments to the Estonian Code in 2004, 2008, 2014 and 2015, the structure and content of international cooperation issues changed to such an extent that they no longer corresponded to the original version. The legal regulation of international cooperation begins with Art. 433 and ends with Art. 508. Notes were added to some articles: 84 only in Art. 508 "Content, form and method of transmission of the European arrest warrant". A link is given below the official title of Ch. 10, and at the end of the Code it is stated that the Code and Ch. 10 refer to 13 framework decisions and an EU Council Directive, namely Council Framework Decision (June 13, 2002) on a European arrest warrant and extradition procedure between EU Member States, Council Framework Decision (July 22, 2003) on the issuance of an EU warrant for seizure of property and provision of evidence, and so on.References to these acts are important because this Code operates on the basis of European documents, and their norms are implemented in the national criminal process, which in the modern world are identical. Therefore, in the named Code, a reference to international documents is a kind of legislative practice of modern criminal procedure in the world.Comparison of the legal provisions of the criminal procedural legislation of the post-Soviet countries shows that in all the Baltic countries (with a simplified extradition procedure) the consent of the extradited persons is required; however, there are some procedural differences. For example, in Latvia the decision is made by the Prosecutor General, in Lithuania by the judge of the Vilnius Regional Court in agreement with the Prosecutor General, and in Estonia by the Minister of Justice. In these countries, a simplified extradition procedure is carried out on two grounds: from EU member states based on a European arrest warrant, and from non-EU countries based on an international agreement.To simplify and speed up the extradition procedure, the Third Additional Protocol to the European Convention on Extradition of November 10, 2010 was adopted. According to Art. 1 of this Protocol, the Contracting Parties undertake to extradite wanted persons to each other in accordance with *a simplified procedure*, *subject to obtaining the consent of these persons* and the consent *of the requested Party*[15].

The third additional protocol entered into force on May 1, 2012 and is now valid for 16 states. The Verkhovna Rada of Ukraine adopted the law "On ratification of the Third Additional Protocol and the Fourth Additional Protocol to the European Convention on the Extradition of Offenders"[16] on

[13] The Criminal Procedure Code of the Russian Federation of December 18, 2001 No. 174-FL (as amended and supplemented, entered into force on June 18, 2017).

[14] The Criminal Procedure Code of the Republic of Tajikistan of 03.10.2009 FL (as amended and supplemented, entered into force on 24.02.2017) // Akhbori Majlisi Oli of the Republic of Tajikistan. 2009. No. 12. Art. 815, 816.

[15] The third additional protocol to the European Convention on Extradition of November 10, 2010. http://ivo.garant.ru/#/document/70305530/paragraph/80:0

[16]https://www.ukrinform.ru/rubric-community/2242887-rada-progolosovala-za-uprosennuu-ekstradiciu-s-evropoj. html

July 6, 2017. The Protocol provides unification of the rules for applying simplified extradition by states. The detained person gives consent to extradition without waiting for the completion of all formalities of the extradition process.Notably, the criminal procedure regulation at the national level in the European Soviet countries – the CCP of Moldova and Ukraine – recognizes a simplified procedure for extradition.Currently, along with the simplified extradition procedure, there is an accelerated extradition within the framework of traditional extradition[17]. The fourth additional protocol to the 1957 European Convention on Extradition provides an expedited extradition clause[18]. This provision was developed within the framework of the Russian initiative to modernize the European conventions on cooperation in the field of criminal proceedings [19], for example, sending requests for extradition and providing documents by using electronic or any other means of communication allowing the transfer of evidence in writing, provided that the Parties can verify their authenticity (Article 6 of this protocol states that documents may be sent using electronic or any other means of communication that allows the transmission of evidence in writing, provided that the Parties can verify their authenticity). Considering the strengthening of the ongoing integration processes within the CIS, including the process of states' accession to the Eurasian Economic Union, under the influence of which the internal legislation of the member states is being harmonized, it can be concluded that the adoption of an act simplifying the extradition process would have a positive effect on the implementation of cooperation[20].

Most of the post-Soviet countries' criminal procedure codes do not provide for a simplified extradition procedure for international cooperation in criminal matters. A new stage in the development of criminal procedural legislation, including international cooperation in the post-Soviet space, is the second wave of drafting and adoption of new Criminal Procedure Code after the collapse of the USSR, as evidenced by the prepared drafts and adopted by the Criminal Procedure Code of Kazakhstan (July 4, 2014)[21] and of Kyrgyzstan (December 22, 2016).[22] Neither of these codes provides a simplified extradition procedure which depends not so much on the date of adoption but on the will of the legislator.

[17] 'Accelerated and simplified proceedings under the criminal procedural legislation of the main capitalist states' (1981) 186 *Legislation of foreign countries. Survey information* 18

[18] Fourth Additional Protocol to the European Convention on Extradition, September 20, 2012 //http://ivo.garant.ru/#/document/71536514/paragraph/96:0

[19] The prosecutor's office agreed with the Council of Europe on simplified extradition: URL: // https://rg.ru/2015/02/24/ekstradicia-site.html

[20] F.F. Idiev, F.N. Radjabov, 'The mechanism of extradition (extradition) in the European Union and the CIS countries: a comparative legal analysis' (2015) 4 *Legal life* 54

[21] The Criminal Procedure Code of the Republic of Kazakhstan dated July 4, 2014 No. 231-V (with amendments and additions as of April 18, 2017). https://online.zakon.kz/Document/?doc_id=31575852

[22] Criminal Procedure Code of the Kyrgyz Republic of December 22, 2016. www.legislationline.org/download/action/.../Kyrgyzstan_CPC_1999_am2016_ru.pdf

Rights to protection of a person when extradited to a foreign state for criminal prosecution

Although science widely believes that extradition belongs to "the main areas of international cooperation in the fight against crime"[23], post-Soviet countries should be very careful about this issue when concluding international treaties on the fight against crime, at least bilateral ones. If there is an article entitled "Extradition" in international treaties adopted within the framework of the UN, this does not mean that extradition is one of the mechanisms for combating crime. These treaties provide, in general, the possibility of extradition for certain crimes and subject to the consent of states. A new worldwide (including in post-Soviet countries) trend in the development of extradition is the need to change the attitude towards extradition as a one-vector "mechanism for combating crime." This is mainly facilitated by the "institution of extradition and the right of asylum", which began "to be used by Western states in the ideological and political struggle through the use of double standards with the declaration of terrorists as freedom fighters and freedom fighters as terrorists"[24]. N.M. Marchenko notes: "... the post-Soviet state needs to, without looking back at the liberal West ... timely take all the measures provided for by law aimed at ensuring law and order in society and at its further strengthening ..."[25].

One of the features of the trend in the post-Soviet countries is the availability of a lawyer's assistance for those persons who are to be extradited and need protection including "providing all legal means of protection"[26]. Individual rules on cooperation or general provisions ensure the availability of protection for individuals[27] and propose to grant the individual the special status of "requested for extradition"[28]. Nevertheless, these tendencies are also observed in the post-Soviet space – the methods of protection are expanding, and the number of complaints within a particular state or at the international level is growing[29],[30]. Along with such guarantees and protections, there is also a firm

[23] E.G. Lyakhov, 'Extradition and the principle 'aut dedere, aut judicare': formation and modern problems' (2012) 2 *Public and private law* 165

[24] ibid.

[25] M.N. Marchenko, *Soviet and post-Soviet state and law (comparative legal research)* (AST, 2017).

[26] A.V. Marchenko, 'Provision of procedural guarantees in the course of extradition of criminals' (2009) 4(44) *Bulletin of SPb. University of the Ministry of Internal Affairs of Russia* 38

[27] A.A. Nasonov, 'Realization in criminal proceedings of the right to protection a person upon extradition to a foreign state for criminal prosecution has' (2018) 4 *Bulletin of Voronezh Institute of the Ministry of Internal Affairs of Russia* 193

[28] A.A. Nasonov, 'The need to create a new model of the procedural status of a person requested for extradition for criminal prosecution' (2019) 1 *Bulletin of Voronezh Institute of the Ministry of Internal Affairs of Russia* 186

[29] I.S. Kononov, 'Implementation of the principles and objectives of the criminal code when the European Court hears complaints of persons subject to extradition' (2010) 3 *Actual problems of Russian law* 271

[30] Sh. D. Sodikov, 'The principle of reciprocity on extradition issues' (2018) 6 *Legal Science* 86, 87

position with the aim of realizing the extradition of persons[31]. A question arises within the framework of international cooperation, including the Eurasian Economic Union[32]. This is a voluminous work to expand the territory and competence of this union, while more and more problems of international cooperation arise. The provisions of the Minsk and Chisinau conventions and other CIS treaties are unlikely to respond to new challenges within the framework of this union.The criminal procedure policy is of great importance in the further development of international cooperation. E.V. Popadenko notes that "the implementation of the international agreements reached in the field of combating crime at the national level is carried out by law enforcement agencies of the state within the framework of international cooperation in the field of criminal proceedings (by extradition ...), international cooperation in the fight against crime confirms the definition of this activity as a special direction of criminal policy"[33]. According to A. Kh. Pikhov, "in the settlement of extradition issues, when the 'densest' and most active interaction of subjects of criminal prosecution of different states is carried out, the prosecutor's office and preliminary investigation bodies play a leading role and are an integral (unconditional) element in the legal mechanism for the implementation of criminal policy in the field of international cooperation (extradition) in the investigation of criminal cases"[34]. In other words, in modern criminal procedural policy, international cooperation, including extradition, is an important issue in the post-Soviet space.

The upward trend in the authority of the court and the problem of access to judicial protection when extraditing persons

The institution of extradition continues to develop, and, despite certain differences in legal systems, its development is proceeding in a democratic direction. Extradition is recognized as a possible guarantee of ensuring a fair trial and respect for rights and freedoms[35].

In the light of judicial protection, the role of the court in resolving extradition issues in post-Soviet countries is growing. In the USSR, extradition was decided by the prosecutor's office, and at present the post-Soviet countries, in order to converge with the best international practice in this area, attach great importance to the role of the court in resolving extradition issues. Some states even regulated this issue directly in the constitution. For example, Art. 36 of the Constitution of the Republic of Estonia of June 28, 1992 provides that

[31] M.V. Arzamastsev, 'Admissibility of deprivation of citizenship and extradition of a polypatrid who committed a crime' (2016) 3 *Bulletin of SpbSU* 15

[32] V.I. Samarin, 'Prohibition of extradition of own citizens and equality of citizens in conditions of integration' (2018) 3 *Siberian legal bulletin* 82

[33] E.V. Popadenko, 'International cooperation in the fight against crime as a direction of criminal policy' (2014) 3(14) Criminalist Library 351

[34] A.Kh. Pikhov, *The main directions of criminal policy in the field of international cooperation (extradition) in the investigation of criminal cases* (Krasnodar, 2009).

[35] E.F. Bykova, *Modern processes of convergence and demarcation of the main legal systems* (Moscow, 2012)

"everyone who is subject to extradition has the right to challenge the extradition in an Estonian court".

Belarusian researcher V.I. Samarin identifies "3 systems within which various bodies consider extradition: 1) classical – extradition is permitted exclusively by the executive branch, including the prosecutor's office (Belarus, Iceland, Kazakhstan, Kyrgyzstan, Latvia, Russia, Switzerland); 2) the issue of extradition is decided by the judicial authority (Bulgaria, Germany, Moldova, Norway, Romania); 3) Luxembourg system, which combined the two previous ones: the judiciary decision of an advisory nature, but if the court refused to extradite, then this decision, as a rule, is final (Austria, Great Britain, France, Sweden, Estonia). In a number of countries, the extradited person is not deprived of the right to defend their interests when resolving the issue of extradition by a professional defender and the right to appeal against the extradition decision"[36]. Among the post-Soviet countries (Azerbaijan, Armenia, Georgia, Lithuania, Moldova, Estonia), the issue of extradition is decided by the court. In the Russian Federation, Belarus, Kazakhstan, Kyrgyzstan, Latvia, Uzbekistan, Ukraine, Tajikistan and Turkmenistan, extradition issues are decided by the prosecutor's office. However, in all post-Soviet countries except for Turkmenistan (there the Criminal Procedure Code does not provide this) a person has the right to appeal the decision to be extradited to the court. Along with this, judicial practice is aimed at the effectiveness of extradition. A.G. Veniaminov notes: "an analysis of the practice of the Supreme Court of the Russian Federation in extradition cases shows that in the activities of state bodies, officials, and other practitioners, problems arise in connection with the investigation, consideration and resolution of criminal cases complicated by a foreign element. In this regard, the practice of the Supreme Court of the Russian Federation in extradition cases acquires a special role in resolving the above problems"[37]. As L.V. Golovko notes, "the theory of judicial control has long become a kind of constant in the pre-trial stages of the Russian criminal process – perhaps the most tangible result of the post-Soviet period of its development"[38].

It should be noted that in the modern world the authority of judicial protection is growing. International treaties provide judicial guarantees implemented through the availability and adversarial nature of the judicial process[39]. Regardless of whether the court authorizes extradition or not, the person to be extradited has the right to apply to the court in order to protect their rights and interests. The ECHR and international organizations regularly condemn the

[36] V.I. Samarin, 'Extradition of criminals' (2007) 1 *Belarusian legal encyclopedia* 271

[37] A.G. Veniaminov, 'Consideration of extradition cases by the Supreme Court of the Russian Federation' (2008) 4 *Actual problems of Russian law* 341

[38] L.V.Golovko, 'Post-Soviet theory of judicial control in the pre-trial stages of the criminal process: an attempt at conceptual rethinking' (2013) 9 *State and Law* 17

[39] P.S. Abdulloev, 'Competitiveness and international cooperation in the field of criminal procedure on the example of post-Soviet countries' (2020) *The nature of Russian criminal procedure and the principle of competition: to the 125th anniversary of the birth of M.S. Strogovich. Conference materials, MSU*

so-called extraordinary (extreme, irregular) rendition and similar forced repatriation and other extrajudicial forced displacement and recognize these as contradicting the norms of international law[40].

As noted by D.A. Koshkina, "the judicial procedure for the extradition of persons who have committed crimes ... is currently undergoing unification both at the interregional and international levels, which in turn improves the mechanism of legal support for the criminal process and increases the efficiency of law enforcement agencies in various states" [41].
A feature of the current development stage of extradition institution is the improvement of legal regulation and the formation of the legal framework of this institution at the international level and in the national legislation of post-Soviet countries. At the international level, international treaties on extradition play a special role in legal regulation. The extradition of persons is regulated within the framework of international treaties on legal assistance (treaties on international cooperation in criminal matters) and international cooperation against transnational organized crime, corruption, etc. at the global level, in the fight against terrorism, separatism and extremism at the regional level and individual crimes between states, which provide for the possibility of extradition. The number of such international treaties is constantly increasing in the post-Soviet space. According to Art. 2 of the Shanghai Convention on the Suppression of Terrorism, Separatism and Extremism of June 14, 2001: "In their relations, the Parties shall consider acts… as *extraditable* offenses. In the implementation of this Convention in matters related to *extradition* and provision of legal assistance in criminal cases, the Parties shall cooperate in accordance with international treaties to which they are parties, and taking into account the national legislation of the Parties"(italics supplied)[42].

It must be recognized that "in international treaties, it is not a strict procedural form that finds its regulation, but only the essence of this or that type of international cooperation in the field of criminal proceedings"[43]. Therefore, in this case, national legislation plays a dominant role among post-Soviet countries – there are no countries that did not regulate this issue within the framework of criminal procedure legislation. Besides, there is a tendency to constantly improve the legal regulation of this issue.

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[40] P.A. Litvishko, 'Non-contractual forms of activity of law enforcement agencies on the territory of foreign states' (2014) 6 *Criminalist Library* 291

[41] D.A. Koshkina, 'Modern trends in the development and improvement of the judicial procedure for the extradition of persons who have committed crimes of a terrorist nature through its unification' (2017) 2 *Journal of Foreign Legislation and Comparative Law* 126

[42] Shanghai Convention on the Suppression of Terrorism, Separatism and Extremism of June 14, 2001 //http://www.kremlin.ru/supplement/3405).

[43] A.G. Volevodz, 'The mechanism the Criminal Procedure Code of the Russian Federation implements international legal norms on new directions of international cooperation in the field of criminal justice' (2016) *Actual problems of comparative and international criminal law: collection of scientific articles: to the 15th anniversary of the Department of Criminal Law, Criminal Procedure and Criminalistics (Moscow State Institute of International Relations)* 367

Harmonizing and unifying legal regulation of extradition

Harmonization of criminal procedural institutions, including the rules on extradition, contributes to the strengthening and effectiveness of cooperation. As noted by E.M. Sorokina, "harmonization of national legal systems is becoming the first stage of a single legal space between states. Harmonization of national legal systems originated in international law and results in uniform legal norms. Harmonization of criminal procedural law will help strengthen and facilitate rapprochement and cooperation between law enforcement agencies of both the Member States and Union bodies in the law enforcement sphere''[44].

Harmonization is most often observed in the issues of extradition due to numerous barriers. A mechanism for overcoming barriers is the harmonization and unification of legal regulation. There is convergence (harmonization) of national legislation on the entire scale when there is a convergence with the world community. Of great importance are the UN international acts on the fight against individual attacks and the cooperation of states that offer a similar criminalization of the act. For example, according to the United Kingdom's information on the extent to which they rely on the provisions of the UN Organized Crime Convention and the Protocols thereto for extradition or other forms of international legal cooperation, the United Kingdom is reported to have no practical examples of effective use of The Organized Crime Convention, as it has not yet been reflected in its national extradition law. In addition, it was noted that the United Kingdom was currently amending national legislation on this issue[45].

In the legal sphere of cooperating states and interstate associations, there is often a need for joint solution of common problems and for concerted actions, hence the need to harmonize national legislation. The process of convergence means: a) working out a common course of legal development; b) implementing measures to overcome legal differences; c) taking measures to develop common, joint or uniform legal rules. Each of these actions, in turn, presupposes a series of more specific and sequential co-related actions[46].

According to E.V. Bykova and V.S. Vyskub, "the effectiveness of international cooperation in the field of criminal justice directly depends on the flexibility of the approach of states to comply with their obligations, and on the desire to meet each other halfway in order to ensure the inevitability of punishment for what has been done by exercising their jurisdiction"[47].

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[44] E.M. Sorokina, *Harmonization of criminal procedure legislation in the European Union: PhD thesis* (Moscow, 2016)

[45] List of Illustrative Cases of Extradition, Mutual Legal Assistance and Other Forms of International Legal Cooperation Using Requests Submitted Based on the UN Organized Crime Convention// CTOC/COP/2010/CRP.5.

[46] Yu.A. Tikhomirov, *Comparative Law Course* (Moscow, 1996)

[47] E.V. Bykova, V.S. Vyskub, 'Extradition and human rights: the rule of 'double criminality' (2013) 1 International *criminal law and international justice* 7

V.V. Milinchuk has a similar opinion: "the effectiveness of the response to crime largely depends on the transformation of approaches to such basic problems as jurisdiction, harmonization of national and international legal regulation of material and procedural aspects, as well as the institutionalization of the activities of transnational justice"[48].

Along with harmonization and unification, it is necessary to implement the rules on extradition of persons. As V.V. Milinchuk notes, "one of the most important forms of assistance in implementation is the assistance of various international and regional organizations, as well as individual donor states in the implementation at the national level of the provisions of both 'soft rules' and, even more, 'hard rules' of international law ..."[49].

The role of international, regional and subregional organizations in the adoption of international treaties related to extradition is enormous. Many treaties have already been ratified by the post-Soviet countries, and the norms of these treaties must be implemented into national legislation, and the post-Soviet states still have a lot of work to do in this direction.According to V.V. Milinchuk, "the implementation of instruments in this area by states is hampered by many obstacles that may result from gaps in national legislation or incompatibility of procedures related to implementation and existing or emerging laws"[50].

One of the problems of implementing the norms of international treaties on extradition is that these norms are largely new for national law, and it is difficult work to implement and adapt them in practice. For example, the Chisinau Convention was adopted in 2002, but so far, half of the states that have signed it have not been able to ratify it because many norms of this convention after ratification have yet to be implemented into national legislation. A.G. Volevodz notes: "... the creation by international treaties of legal foundations for new areas of international cooperation in the field of criminal proceedings, previously unknown to domestic criminal procedural legislation, the gaps in the latter must be eliminated through the national legal implementation of their norms in the Code..."[51].

It should be noted that Russia, Ukraine and other states that are not members of the EU but are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and many of the provisions of the convention are similar in content through the execution of decisions of the

[48] V.V. Milinchuk, 'New trends in international cooperation in the field of criminal procedure: the concept of transnational justice' (2004) 4 *State and Law* 94

[49] V.V. Milinchuk, 'Problems and prospects for improving the mechanisms of implementation of international instruments in the field of crime prevention and combating it' (2005) 1 *State and Law* 45, 46

[50] Ibid.

[51] A.G. Volevodz, 'The need to implement in the Criminal Procedure Code of the Russian Federation international legal norms on new directions of international cooperation in the field of criminal proceedings' (2014) 4(14) *Criminalist Library* 325

European Court of Justice and its recommendations. The author of the present study believes that within the framework of the Eurasian integration processes, it is necessary to harmonize the criminal procedure norms in the post-Soviet space. The post-Soviet countries should implement and incorporate into national legislation the norms of international treaties in accordance with national interests.A development trend in extradition institution in the post-Soviet space is the use of technical achievements and means in the criminal process. L.V. Golovko notes: "the problem of using scientific and technological achievements in criminal proceedings is more than traditional, if not classical"[52]. During the process, electronic versions of procedural documents are used before sending an official request; depending on the development of technologies and their availability. If a procedural document is sent by e-mail, the problem of protecting this information arises. Videoconferencing can be used to resolve the issue of being summoned to court during a trial, when a person is interrogated for extradition. The use of the Internet when uploading photos and other data and the search for persons at the international level for the purpose of extradition are especially relevant. However, Interpol, Europol, Ameripol[53] and others make good use of this both at the global and regional levels. A.G. Volevodz notes: "the tendency to create new regional mechanisms and legal regulation has found its practical expression in the formation of international law enforcement organizations, endowed, among other things, with powers in the operational-search and criminal procedural spheres..."[54]. Since the crimes of terrorist and extremist organizations pose a particular danger, the Register of organizations recognized as terrorist and extremist in the CSTO member states and the CIS ATC Data Bank are compiled[55]. The database of international organizations on persons who are on the international wanted list is gradually being improved, especially in relation to those persons who are involved in terrorist crimes. The issues of "artificial intelligence as a subject of criminal law"[56] and a legal entity as a subject of a crime, international cooperation in the extradition of mentally ill persons are still at the stage of reflection in post-Soviet countries.Among the latest trends in international cooperation in criminal matters, it is necessary to note humanization of extradition[57]. For example, Art. 33 of The Law of Georgia on International Cooperation in the

[52] L.V. Golovko, 'Digitalization in criminal procedure: local optimization or global revolution?' (2019) 1 *Bulletin of economic security* 15

[53] A.G. Volevodz, 'International Criminal Police Organization – Interpol and the trend towards the formation of regional law enforcement organizations' (2011) 1 *Criminalist Library* 15

[54] A.G. Volevodz, 'International cooperation in the field of criminal justice: from development trends to an independent theory' (2013) *Actual problems of comparative and international criminal law* 378

[55] URL: https://khovar.tj/rus/2019/11/mezhdunarodnoe-soobshhestvo-bezogovorochno-priznalo-piv-terroristicheskoj-organizatsiej/

[56] V.A. Shestak, A.G. Volevodz, V.A. Alizade, 'The possibility of doctrinal perception by the system of general law of AI as a subject of crime: on the example of US criminal law' (2019) 13(4) *All-Russian criminological journal*

[57] A.G. Volevodz, 'Humanization of criminal law and international cooperation in the field of criminal justice' (2012) 3 *Criminal Law*

Field of Criminal Law of October 1, 2010 stipulates that “the extradition of a person to a foreign state may be postponed ... for humanitarian reasons”. In the process of optimizing the extradition procedure, there is an expansion of the range of crimes and persons subject to extradition, a universal approach to crimes falling under the extradition of persons, protection of the rights and freedoms of extradited persons within the framework of a general approach to the protection of human rights. For instance, international organizations and individual scientists of the Russian Federation accuse the authorities of the fact that practically all cases of extradition of political criminals fall on the citizens of Azerbaijan, Armenia, Georgia, Turkmenistan, Kazakhstan and Uzbekistan, and the persecuted belong to different directions of political opposition or are simply objectionable to the authorities or to individuals of these states.

CONCLUSION

Thus, the trends in the development of international cooperation regarding the extradition of persons primarily depend on the development of the legislation of post-Soviet countries in the field of criminal procedure through adoption, conclusion and ratification of international treaties on extradition, and through harmonization, unification and implementation of these norms into national legislation by adopting new Codes and separate laws regulating extradition and supplementing and changing the current national legislation. There is a tendency to constantly improve the legal regulation of this issue. International cooperation in the field of criminal procedure has two aspects: the fight against crime and the protection of human rights. Post-Soviet countries must observe their balance when extraditing persons. The rights of persons extradited to a foreign state are expanding (the right to the assistance of a lawyer and the right to appeal decisions on extradition, judicial protection and the expansion of the role of the court in resolving the issue of extradition) based on the criminal procedure policy of the post-Soviet countries. One of the trends in the development of extradition in the post-Soviet space is the use of technical achievements and means in the criminal process. A simplified procedure seems expedient in the development of international cooperation in extraditing as soon as possible. Here, a major role is played by the theory of international criminal procedure "as the subject of an independent scientific discipline - the theory of international cooperation in criminal proceedings"[58]. The effectiveness of this process is ensured by law enforcement practice.

[58] A.G.Volevodz, ‘International cooperation in the field of criminal justice – lessons of history and some problems of reforming’ (2014) 6 *Criminalist Library* 287