The Extradition between Serbia and Romania

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Abstract: Within the paper it is examined the institution of extradition between Romania and Serbia, in the light of the provisions of the Treaty into force and the Romanian special law. We have also achieved a comparative examination between the provisions of the bilateral instrument and that of the European Convention on Extradition of 1957, an aspect which highlighted some elements of resemblance between them, several provisions of the European legislative act being taken into the bilateral legal act. The elements of novelty of this paper concern the comparative examination of the two international legal instruments, references to Romanian special law and de lege ferenda proposal, through which we express our opinion for the adoption of a new law regulating the institution of extradition between the two countries. The work can be useful for academics and institutions with direct responsibilities in the domain of judicial cooperation in criminal matters in the two states.

Keywords: judicial cooperation in criminal matters; treaty, convention

1. Introduction

Extradition came amid the needs of absolute monarchies to preserve the authority, but over time it has evolved with the development of society, becoming today one of the most effective forms of struggle against transnational crime (Boroi & Rusu, 2008, p. 102).

Over time, between Romania and Serbia there were numerous bilateral agreements aiming in general for economic exchanges between the two countries.

Gradually these bilateral agreements expanded being considered other areas as well, among which we mention some forms of judicial cooperation in criminal matters.

The research development of bilateral relations between the two countries in the field of judicial cooperation in criminal matters leads to the conclusion that the first bilateral legal instrument was concluded in 1863 under the title of Extradition Convention between Romania and Serbia.

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Continuing the bilateral relations in this area, the Convention is replaced by another legal bilateral instrument that is the Convention between Romania and Yugoslavia related to the extradition of criminals and legal assistance in criminal matters, signed in Belgrade on January 30, 1933.

After the establishment of socialist totalitarian regimes in Southeast Europe in Belgrade on 18 October 1960 it was signed the Treaty between the Romanian People's Republic was signed Romanian and Federal People's Republic of Yugoslavia on Legal Assistance, bilateral international instrument ratified by Romania by Decree no. 24/1961, published in the Official Monitor no. 6 of February 6, 1961.

According to the stipulation of article 86 paragraph 3, the Convention between Romania and Yugoslavia Convention related to the extradition of criminals and legal assistance in criminal matters will become invalid, with the entry into force of the legal instrument in question.

After about two decades, on 21 January 1972, at Bucharest it is signed the Additional Protocol to the Treaty between the Romanian People's Republic and the Federative People's Republic of Yugoslavia on Legal Assistance, bilateral international legal instrument ratified by Romania by Decree no. 142/1972 published in the Official Monitor no. 48 of May 8, 1972.

We note that the Protocol has replaced the article 49 of the Treaty, allowing direct transmission, upon request, of study documents and years of service, as well as civil status certificates, regarding citizens from each Contracting Party.

The increase of cross-border crime has led the states in south-eastern Europe to intensify efforts in order to prevent and combat it more firmly, extending the bilateral arrangements in the region.

Against this background, it was signed in Bucharest on 26 May 1999, the Cooperation Agreement for the preventing and combating cross-border crime (SECI Agreement) with the following States parties:

- Albania, Bosnia and Herzegovina (in force from 1 September 2000);
- Republic of Bulgaria (in force from 1 August 2000);
- Republic of Croatia (in force from 1 November 2001);
- The Hellenic Republic (in force from 1 May 2001);
- Republic of Macedonia (in force from 1 April 2000);
- Republic of Moldova, Montenegro (in force from 1 November 2008);
- Romania (in force from 1 February 2000);
- Serbia (in force from 1 September 2003);

- Republic of Slovenia (in force from 1 November 2000);
- Republic of Turkey (in force from 1 December 2000);
- Republic of Hungary (in force from 1 July 2000).

Subsequently, the agreement was amended and became SELEC Convention, the text of which is adopted in September 2009, the Convention entered into force on 7 October 2011.

We also consider the Convention on the cooperation on the protection and sustainable use of the Danube river, signed in Sofia on 29 June 1994 which entered into force on 22 October 1998, with the following States parties: Austria (with the declaration), Bosnia and Herzegovina (in force since 11 July 2005), the Republic of Bulgaria (in force from 2 August 1999), the Republic of Croatia (with the declaration), Czech Republic, Germany, Moldova (in force from 29 August 1999) Romania, Serbia (effective from August 19, 2003), Slovak Republic, Slovenia, the European Union (in force as of 22 October 1998), Ukraine (in force from 13 May 2003) and Hungary (with the declaration).

All these international legal instruments demonstrate the constant concern of the two neighbors to intensify the efforts for preventing and combating the crime in the area.

2. Brief Examination of the Institution of Extradition as Provided in the Treaty of 1960

Although from the title of the Treaty it would result that it includes provisions which concern only judicial assistance in civil and criminal, from the examination of its content it result that it comprises several forms of judicial cooperation.

The treaty is divided into four parts, the first of which is intended for general provisions that regulate the cooperation between the two countries, the second governing the legal assistance in civil and family cases, the third deals with judicial assistance in criminal matters, and the last part contains final provisions.

The 3rd Part is divided into two sections, the first being for judicial assistance, and the extradition and transit being the second.

Given the scope of the work, we proceed in examining the brief provisions governing extradition and the transit between the two Contracting States.

Under the treaty, the two countries shall grant mutually the extradition, upon request, in the case where there are persons in their territory for prosecution, trial or punishment execution (Treaty, 1960, article 68, paragraph 1).

Regarding the prosecution and judgment for granting extradition it is necessary for the punishment of deprivation of liberty to be under both laws, greater than a year, and the extradition of persons who have been sentenced, shall be admitted only if the sentence imposed by the court Case is of one year or more.

- Extremely important is the provision according to which, in the case where the sentenced person was not present at his own trial, the trial will be retried in the presence of that person.

That provision established in the Treaty (Treaty, 1960, article 68, para. 3) is of major importance for the development of the institution, being taken over later and highly novel in most international instruments in the matter, particularly those adopted at the European Union level.

In fact, the necessity of a person's presence to trial represents a requirement imposed by the ECHR judgments, which determined also the modification of legal instruments regulating some forms of international judicial cooperation in criminal matters at the European Union level.

Extradition shall not be granted in the following circumstances (Treaty, 1960, article 69):

- The person whose extradition is requested has committed an offense of political nature, a pure military offense (which consists solely in infringing the military obligations) or a press offense;
- The person concerned, on the receipt of the extradition request, was a citizen of the requested Contracting Party;
- The offense is committed in the territory of the requested Contracting Party;
- According to the law of the requested Contracting Party, prosecution cannot be exercised or the final judgment cannot be enforced due to the expiration of the limitation period before it received the request for extradition, or other legal grounds;
- The person whose extradition is requested has been finally judged for the same offense, or if for the same offense the proceedings ceased in the territory of the requested Contracting Party;
- Under the law of both Contracting Parties, the offense refers only to the preliminary complaint of the injured party (private action or the proposal of the injured party).

The provisions laid down in the Treaty which expressly provide for cases in which extradition is not granted, even if it is requested by a Contracting State, are in their essence, the true reasons for refusal of extradition.

All these reasons for refusal laid down in the Treaty are of great interest, as provided for in the current international legal instruments.

We note that, in agreement with other international bilateral legal instruments of this type, adopted in that period and thereafter until the end of the last century it is not granted extradition to its citizens.

It is interesting the fact there were nor extradited the persons who have committed press offenses, although at that time both countries were part of the socialist system, where civil rights and freedoms were often violated and the freedom of the press was only theoretical.

Under the depositions of the examined legal instrument, the extradition request submitted by one of the two Contracting States shall be accompanied by the following documents (information):

- Certified copy of the arrest warrant (de decision of the competent judicial body on the deprivation of liberty) or the conviction decision noting that it is final. These documents must be exposed to the facts, indicating the time and place of the offense and its legal qualification. If after the commission of the offense has caused material damage, then it will be indicated its extent;
- The text of criminal law where the offense is assigned, for which extradition is requested, both of the requesting Contracting Party and the State where the offense was committed;
- Evidence and data on the nationality of the person whose extradition; it is requested, data and means for establishing its identity (description, photo, fingerprints) in the cases where the claimed person is not identified in the requested Contracting Party, as data on its location, if possible.

In the case where after the receipt of the request accompanied by the mentioned information, the competent judicial authorities of the requesting State establishes that the conditions stipulated in the Treaty, will proceed to the search of the extraditable person and implicitly to its arrest.

If the requested Party considers that further information is necessary, it will require it, and the requesting State is obliged to send it no later than two months, within which, upon request, could be extended.

In the case where, by the deadline set the information is not received, the requested State will release the extraditable person, the extradition procedure may be resumed after receiving the required information.

In certain circumstances, a person is arrested on the territory of the Contracting Party may also take place prior to receipt of the extradition request, if the applicant requests it so by mail or telegraph, noting that the request for extradition will be

transmitted later. In this case, the request for arrest shall indicate the number and date of the arrest warrant or final judgment set against the person concerned and the name of the body from which it emanates.

Under the examined legal instrument (The Treaty, 1960, article 73 para. 2), a person can be arrested without the application referred to above, if there are sufficient grounds that the person has committed an offense on the territory of the other Contracting Party from which the extradition can be applied.

Both in case of arrest and refusal of the requested Party shall inform the applicant, indicating the reasons for the non-execution of the request for arrest.

In the case where, if within the deadline set by the judicial authorities of the requested State which shall not be less than one month (from the communication of the arrest), the requesting State does not send the request for extradition, the arrested person will be released.

When, against the person whose extradition is requested has pending criminal proceedings or the person has been convicted of a crime on the territory of the requested Contracting Party, the extradition may be postponed until the end of the trial, and if the person is convicted, until the complete execution of the sentence or until the release before the expiry of its duration. Reasons for the postponement of extradition will be made known to the other party.

If the postponement of extradition might attract the expiry of set time of the criminal action or it could bring serious difficulties for proving the offense, the person whose extradition was requested may be temporarily extradited on the basis of a reasoned request. In these situations, the temporarily extradited person shall be returned after the procedural acts for which the person was extradited, but no later than three months from the date of transfer. Upon request the deadline may be extended.

In the case where the extraditable person is requested by several States for the same offense or different offenses, the requested State will decide to which state the extradition will be granted.

Also, the extradited person may not be prosecuted, subject of penalty or extradited to a third State for an offense committed before extradition, in the case where the extradition has not been requested, without the consent of the Requested State. The consent may be refused for the same reasons for which the extradition has been.

At the same time, the consent is not required, if the extradited person, who is not a citizen of the requesting State, does not leave the state within one month from the end of criminal proceedings, and in case of conviction, within one month from the execution of the sentence, respectively from the end of its execution, or if the person voluntarily returns on its territory.

After examining the extradition request, the requested State will inform the requesting State on surrendering date and place of the requested person. If the requesting state fails to take into custody the extradited person within 7 days of the due date, the person will be released.

If the extradited person evades prosecution, the trial or the execution of the sentence and returns on the requested State, upon request, the person will be extradited.

Regarding the outcome to which the extradited person is subject, the information will be forwarded to the Contracting Party, including a copy on the final decision.

In case of prosecutions were there have been identified items or amounts of money that were obtained by offense, they will be handed over to the requesting state.

Transit will be accepted by each of the two Contracting States, upon request.

3. The Extradition in the European Convention of Extradition. Comparative Examination

Adopted in Paris on 13 December 1957 and subsequently completed by two additional Protocols on 15 October 1975 and 17 March 1978, the European Extradition Convention was ratified by Romania by Law no. 80/1997, as amended by Law no. 74/2005.

We should note that both the European Convention on Extradition and the two Additional Protocols were ratified by Serbia.

By making a comparative analysis between the provisions of two international legal instruments (extradition Convention between Romania and Serbia and the European Extradition Convention), we find, for the most part, there are many identity elements.

Thus, with regard to general conditions to be fulfilled for granting extradition for the purposes of criminal prosecution or trial, we see that they are identical, meaning that the sanction provided by law for the offense for which extradition is sought must be punishable with a sentence of deprivation of liberty or a security measure of at least one year or with a more severe penalty.

The significant differences related to the punishment limit are in the case where the extradition is requested for the execution of a sentence; thus, in the European Convention penalty the punishment limit must be at least 4 months while in the bilateral Treaty it must be of a year or more.

Regarding the reasons why it will not grant extradition, we see a perfect identity on: political offenses, military offenses, the person sought is a national of the

requested State, the offense is committed in territory of the Requested State, non bis in idem, it has intervened the limitation period.

Compared to the European Convention in which it makes no reference, we find that in the bilateral Treaty there will not be subject to extradition the persons who have been convicted for press offenses.

At the same time, in the bilateral Treaty, there is no reference to the refusal of extradition in case of the death sentences compared to the European Convention prohibiting extradition in such cases.

This difference between the two international legal instruments was possible at the time of their adoption, because both contracting States had set in their national law the death penalty.

Regarding the specialty rule, although it is not called so, we find that it is maintained in the bilateral treaty in a similar wording.

We also note that, between the arrest and surrendering the extradited person to the competent authorities of the requesting State, there is an almost perfect identity with some non-significant differences.

The arrest and surrender procedure also presents many identity elements.

Also, any rejection of the extradition request must be justified by the requested State.

The identity element exists also in terms of remittance the goods and objects or additional information transmission on the requesting person.

We have presented the most important elements of identity or similarity between the two legal instruments on judicial cooperation in criminal matters, in order to emphasize that under the conditions imposed by the totalitarian regimes, the two countries have signed such a document with a special significance at the level of combating the cross-border crime whose growth was foreseeable since that time.

Moreover, the totalitarian political regimes in both countries have not accepted at those times the ratification of the European Convention on Extradition, this being achieved for both countries after 1990.

4. Extradition in the Romanian Law

In the Romanian law express provisions on extradition, including the Romanian citizens, are included in the content of article 19 of the Romanian Constitution and article 14 of the Criminal Code.

Also, the basic provisions governing all forms of international judicial cooperation in criminal matters, including extradition, are stipulated in Law no. 302/2004 on

the international judicial cooperation in criminal matters, as amended and supplemented, the last occurring with the adoption of Law no. 300/2013.

Throughout the express provisions of that law which regulate the institution of extradition there are provided for under Title II, with the same name (extradition), article 18-83.

Considering that at the moment Serbia is not yet a member of the European Union between the two countries it cannot be incident the provisions of Framework Decision 2002/584 / JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

In these circumstances, the surrender of wanted persons will be achieved under the provisions of the existing Treaty, which will be completed as appropriate, with the special Romanian law or with the law of the Serbian state.

If we refer to the Treaty's provisions, we see that the Romanian special law in force provides more extensive possibilities of achieving the extradition, in both situations, namely passive and active extradition.

In this regard, on the Romanian citizens, we find that under the provisions of the Romanian special law, they may be extradited from Romania on the basis of multilateral international conventions to which it is party and on the basis of reciprocity only if the following conditions are met:

a) the extraditable person domiciled in the Requesting State at the time of the extradition request;

b) the extraditable person has the citizenship of the requesting state;

c) the extraditable person committed the act on its territory or against a citizen of an EU member state, if the requesting State is a Member State of the European Union.

In the cases mentioned above under letter a) and c) when extradition is requested in view of criminal prosecution or trial, the additional condition is that the Requesting State provides guarantees deemed as sufficient as, in case of conviction to sentence of deprivation of liberty by a final judgment, the extradited person will be transferred to serve the sentence in Romania.

Also, the Romanian citizens can be extradited based on the provisions of the bilateral treaty and on a reciprocal basis (article 20 of Law no. 302/2004).

Proceeding to examine the provisions of Romanian special law which regulates the conditions under which a Romanian citizen may be extradited by reference to the provisions of the Treaty between Romania and Serbia, we find that the Romanian law provides several possibilities for the extradition of its citizens, and even

referring only that in the Treaty it is expressly provided that the extradition of nationals is not allowed.

On the other hand, it notes that, under the Romanian law, the refusal of extradition of the Romanian citizen, the Romanian state requires that at the demand of the Requesting State to submit the case to its judicial authorities, so that they can pursue criminal prosecution and trial, if necessary.

Briefly, if the competent judicial authorities of Serbia request extradition of a Romanian citizen under the Treaty and it is fulfilled one of the conditions expressly specified in the Romanian law, the Romanian judicial authorities will grant extradition, however, with the imposition of two fundamental conditions, namely:

- Ensuring reciprocity and
- Offering guarantees deemed as sufficient by the Romanian state, that in case of conviction to sentence of deprivation of liberty by a final judgment, the Romanian citizen will be transferred to Romania for executing it in the country.

In the case where the extradition of the Romanian citizen is not granted at the request of the competent authorities of Serbia, the Romanian judicial authorities will take over the criminal proceedings and it will order the measures consistent with the Romanian law, and it shall inform the competent authorities of the neighboring state in relation to the final solution adopted by the competent judicial authorities in Romania.

Consequently, in the case where the Romanian judicial authorities require the extradition of a Serbian citizen who has committed a crime in Romania, the procedure seems to be difficult because there is no bilateral legal instrument allowing this and The Treaty forbids the extradition of citizens.

In those circumstances, even in situations where in Serbia there would be a special law to regulate the institution of extradition, and the Treaty is inapplicable, the only possibility remains reciprocity.

Reciprocity implies an assurance given by the competent authorities in Serbia that in similar situations, these authorities will grant extradition to its own nationals in Romania, where they will be prosecuted or in trial.

Consequently, considering the provisions of the Romanian law, in case of conviction to a penalty or to a sentence of deprivation of liberty security measure, the citizen will be transferred to Serbia for execution.

Even in this situation, a particular problem remains one of the ways by which a judgment is recognized and executed in Serbia by a court in Romania, the one which became final.

5. Conclusions and Critical Remarks

The increase of cross-border crime and particularly that concerning the organized crime and hence the need to prevent and combat this scourge more strongly, it involves all European states' involvement in taking action to boost the judicial cooperation in this area.

Against this background, the extradition appears to be currently the most important form of judicial cooperation in criminal matters to be applied consistently by the two neighboring countries.

Unfortunately, the Treaty signed in the second half of the last century, having many current elements in essence it no longer corresponds to the current stage, at least as regards the extradition of nationals, the procedure of extradition, the transfer of proceedings in criminal matters, transfer of sentenced persons and the recognition and enforcement of judgments given in one of the two states.

In order to improve the forms of judicial cooperation in criminal matters between the two countries, de lege ferenda, we propose the adoption of a new legal bilateral instrument (treaty or convention) by which to regulate firstly the institution of extradition between the two countries, but also other forms of judicial cooperation in criminal matters taking into consideration the international legal instruments in force at the moment and the evolution of these institutions.

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