

# Extradition- it`s nature and scope in criminal matters

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## Abstract

Extradition is a formal process conducted through treaties and other legislation that regulates the conditions and the procedure in which one person from one state can be sent to another state to be tried or to serve a sentence. It aims to sentence the perpetrator, even if he/she have moved from one state to another state.

Main documents in which we were focused while preparing this paper are: The European Convention on Extradition (and its additional protocols) from 1957 with its Protocols and the Law on International Cooperation in Criminal Matters of Macedonia (Official Gazette no.124 from 20.09.2010).

The criminal legislation of contemporary states and the international law looks for fulfillment of these principles in extradition matters: the principle of reciprocity, the principle of double incrimination, the *non bis in idem* principle and the principle of specialty. These principles help in protection state`s sovereignty, independence, equality and their prestige in international relations. They also help in protection of human rights and freedoms of the person to be extradited. There are usually two parties (states) included in this process: requesting Party and requested Party.

*Keywords:* extradition, process, party, principle, person.

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## 1. Introduction

International collaboration in combating crime nowadays is an indisputable must, which remains as only possible answer of the fact that criminality does not recognize state borders and on the other hand, the universal conceptualization of human rights and freedoms needs a unique and effective reaction to any form of their threat or violation. These new standards cannot be achieved without developing intensive tools for mutual collaboration among states, aiming in detection and prosecution of perpetrators of crimes and execution of criminal sanctions<sup>1</sup>.

The oldest form of mutual collaboration is the extradition of the perpetrators, which consist on surrender of the perpetrator, under certain circumstances and in given procedure, from one state to another for criminal prosecution or execution of a criminal sanction. Into this institute are reflected the interests of both countries: the requesting country, which has the interest to effectuate its own repressive power and the interest of requested country, which from is seemed to surrender the perpetrator and which has not any interest to become a shelter of criminals<sup>2</sup>.

Extradition is a process, regulated by domestic and international law, which reflects on surrender of the perpetrator- accused or convicted person, from one state to another. Given the possibilities of perpetrators to escape from one state to another, after committing the crime and their aiming to escape the responsibility for his or her crime, the institute of extradition and its help in arresting and convicting the perpetrators is an invaluable tool.

Effective extradition legislation and treaty procedures are especially important for transnational offenses where the perpetrator of a criminal offense has fled to another state. Extradition is

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<sup>1</sup>Vlado Kambovski, *Kazneno Pravo- Opsht Del*, Vtoro Izdanie, Kultura, Skopje, 2005, pp. 169

<sup>2</sup> Ibid, pp.169

regulated by bilateral or multilateral extradition treaties or agreements or by domestic legislation (and sometimes by a combination of them). Examples of multilateral extradition treaties include the Economic Community of West African States Convention on Extradition, the European Convention on Extradition (and its additional protocols), and the Inter-American Convention on Extradition. Treaties such as the United Nations Convention against Transnational Organized Crime (and its additional protocols on trafficking in person and migrant smuggling) and the United Nations Convention against Corruption have provisions that states parties may use as a substitute for a dedicated extradition agreement (although only with regard to the extradition of persons in connection with organized crime, trafficking in person, smuggling of migrants, illicit manufacture and trafficking in firearms and ammunition, and corruption).<sup>3</sup>

For the purposes of this paper, we focused on the European Convention on Extradition (1957), its Additional Protocols (1975, 1978, 2010 and 2012) and the domestic law of the Republic of Macedonia (The Law on International Cooperation in Criminal Matters of Macedonia (Official Gazette no.124 from 20.09.2010)).

Regarding the extradition as an institute of both: international law and criminal law, there is a dilemma whether the surrender of the perpetrator is an obligation that derives from international law, only an act of good willingness or a sign for good relations between requesting and requested party. In the old literature, there were different approaches to this question which can be divided in two groups<sup>4</sup>.

In the first group of authors, that was led by Hugo Grocius, belong authors that share the opinion that the requested party is obliged to surrender or to punish the perpetrator. This opinion was formed from Hugo Grocius with well-known phrase: *aut dedere, aut punire* (surrender or punish).

The second group of authors share the opinion that extradition must be considered as an moral obligation and this kind of inter-state collaboration must be executed in accordance with respective treaties.

Nevertheless, bearing in mind its content and complexity, it looks that extradition is an act of good willingness of sovereign states, even when it is granted in accordance with a treaty or in absence of such a treaty.<sup>5</sup> In mostly cases, states decide to grant extradition when there is a treaty that regulates the extradition. Opinions, that a state must grant extradition, even though a treaty doesn't exist, are very rare. There are also states that the absence of a treaty considers as an absolute obstacle for granting extradition<sup>6</sup>.

The concept that extradition must be granted even in absence of a treaty, firstly appeared in France, in the beginning of the XIX century. Later on, this concept was adopted by many other countries<sup>7</sup>.

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<sup>3</sup> Vivienne O'Connor and Colette Rausch, *Model Codes for Post-Conflict Criminal Justice, Model Code of Criminal Procedure, Volume II*, United States Institute of Peace, Washington DC, 2008, pp. 441

<sup>4</sup> Ismet Salihu, *E drejta penale dhe kombëtare*, Prishtinë, 2005, pp. 141

<sup>5</sup> *Ibid*, pp.142

<sup>6</sup> In the group of states that the absence of a treaty considers an absolute obstacle for extradition are the states that belong to common law system

<sup>7</sup> Salihu, pp. 143

## 2. European Convention on Extradition

The 1957 European Convention on Extradition (hereinafter referred to as the ECE), which entered into force on April 18, 1960, as amended by the two additional protocols thereto of 1975 and 1978, is one of the oldest European treaties in the criminal law field and has a direct impact on individuals rights and freedoms<sup>8</sup>.

ECE is the main international document that regulates the institute of extradition among the member-states of European Council. It has been signed on 13.12.1957. It has four Additional Protocols.

This Convention aims to strengthen the cooperation among states in criminal matters, by foreseeing provisions that regulates the procedure of extradition. The Contracting Parties undertake to surrender to each-other, subject to the provisions and conditions laid down in the Convention, all persons against whom the competent authorities of the requesting Party are carrying out proceedings for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order (Article 1).

*Extraditable offences:* Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months. If the request for extradition includes several separate offences of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfill the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences (Article 2-1,2).

### *Exclusions from extradition*

The European Convention on Extradition excludes the political offences and the military offences from the obligation of extradition. Also, extradition shall not be granted if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons. According to the Convention, extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any such offence or category of offences.

Contracting Parties are not obliged to grant extradition for their nationals. In such a case, the Party that have denied to grant extradition must submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

Other situations in which the requested party has the right to refuse the extradition are: pending procedure for the same case, *non bis in idem*, lapse of time and the capital punishment. Pending procedure for the same case exists if the competent authorities of the requested Party are proceeding against him in respect of the offence or offences for which extradition is requested (Article 8). *Non bis in idem* as a prohibition means that extradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person

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<sup>8</sup> Michael Plachta, Third Additional protocol to the 1957 European Convention on Extradition, Vol.27, Issue 8, 2011, pp.1

claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences (Article 9). Lapse of time as an obstacle for extradition includes the situation in which the person claimed has, according to the law of either the requesting or requested Party, become immune by reason of lapse of time from prosecution or punishment (Article 10). The last obstacle is the capital punishment that may be executed to the extradited person. If such a doubt exists, the Convention prohibits the extradition. Namely, if the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that the death-penalty will not be carried out (Article 11).

*The request and supporting documents:* The request shall be in written and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more parties. The request shall be supported by: the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party; a statement of the offences for which extradition is requested, the time and place of their commission, their legal description and a reference to the relevant legal provisions shall be set out as accurately as possible and a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any information which will help to establish his identity or nationality. If the information communicated by the requesting Party is found to be insufficient, the requested Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof. The rule of specialty takes place at the European Convention of Extradition. In its article 14 it is stated that: "A person who has been extradited shall not be proceeded against, sentenced or detained with a view to carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases: when the Party which surrendered consents, when the person having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

*Provisional arrest:* In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through diplomatic channel or direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and necessary documents. The parties agree about the place and the time of surrender of the person claimed. If the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The party may refuse to extradite him for the same offence.

Additional Protocol to the European Convention on Extradition

The Addition Protocol to the European Convention on Extradition was adopted on 15.10.1975 in Strasbourg. It focuses in the articles 3- *political offences* as well as article 9 - *non bis in idem principle* of the Convention.

The Convention does not define what a “political offense” shall mean, but only mentions them as excluded from extradition and only states that the taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.

The Protocol further limits the scope of such offences by excluding also war crimes and crimes against humanity. Due to the Additional Protocol (Chapter I, Article 1), political offences shall not be considered to include: the crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General assembly of the United Nations; the violations specified in Article 50 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked members of Armed Forces at sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War and any comparable violations of the laws of war having effect at the time when the Protocol entered into force, which are not provided in the above-mentioned provisions of the Geneva Conventions.

Moreover, the Protocol supplements the provisions of the Convention that deal with the principle “*ne bis in idem*”, namely its Article 9, by enlarging the number of instances in which the extradition of a person is barred where that person has already been tried for the offence in respect of which the extradition claim was made. Due to the Article 2- Chapter II of this protocol, the extradition of a person against whom a final judgment has been rendered in a third State, Contracting Party to the Convention, for the offence or offences in respect of which the claim was made, shall not be granted: a). if the aforementioned judgement resulted in his acquittal, b). if the term of imprisonment or other measure to which he was sentenced: 1. has been completely enforced, 2. has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty and c). if the court convicted the offender without imposing a sanction. Extradition may be granted, in the above-mentioned cases, in these situations: a). if the offence in respect of which judgment has been rendered was committed against a person, an institution or anything having public status in the requesting State, b). if the person on whom judgement was passed had himself a public statue in the requesting state and c). if the offence in respect of which judgement was passed was committed completely or partly in the territory of the requesting State or in a place treated as its territory (Paragraph 3 of Article 2).

Second Additional Protocol to the European Convention on Extradition

The Second Additional Protocol to the European Convention on Extradition was adopted on 17.03.1978 in Strasbourg. The Second Protocol is designed to facilitate the application of the Convention on several points and aims, in particular, to include fiscal offences among the category of offences for which a person may be extradited under the Convention. This Protocol also contains additional provisions on judgments *in absentia*, amnesty and national authorities dealing with the request for extradition.

This Protocol replaces the provision of the Convention that is related to the fiscal offences and competent authorities that deals with the request for extradition. While the Article 5 of the Convention foresees that extradition shall be granted for offences in connection with taxes, duties, customs and exchange only if the Contracting Parties have so decided in respect of any

such offence or category of offences, the Second protocol replaces this provision and states that: “For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party.” Instead of diplomatic channel as proper way for communication, this protocol puts the Ministry of Justice of contracting parties as first competent authorities for communication between contracting parties. It also does not exclude the diplomatic channel as well as other means of communication that might be arranged by direct communication between two or more parties.

The Chapter III- Article 3 and the Chapter IV- Article 4 of this Protocol, supplements the Convention with the provisions about cases *in absentia* and the case of amnesty. Namely, according to the Article 3, paragraph 1: “When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him *in absentia*, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgement did not satisfy the minimum rights of defense, recognized as due to everyone charged with criminal offence. However, extradition shall be granted to the person claimed the right to a retrial which safeguards the right of defense. Regarding to the amnesty, an extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.

Third Additional Protocol to the European Convention on Extradition was adopted on 10.11.2010 in Strasbourg. It tempts to simplify the procedure for extradition when the person sought consents to extradition. In such cases, when the person sought is the subject of a request for provisional arrest (according to the Article 16 of the Convention), the extradition, due to this protocol (Article 1), shall not be subject to the submission of a request and supporting documents as foreseen in the Convention (its Article 12). The following information shall be provided: a). the identity of the person sought, including his or her nationality or nationalities when available; b). the authority requesting the arrest; c). the existence of an arrest warrant or other document having the same legal effect or of an enforceable judgement, as well as a confirmation that the person is sought in accordance with the Article 1 of the Convention; d). the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment, including whether any part of the judgment has already been enforced; e). information concerning lapse of time and its interruption; f). a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought; g). in so far as possible, the consequences of the offence; h). in cases where extradition is requested for the enforcement of a final judgment, whether the judgment was rendered in *absentia*.

The consent to extradition of the person sought must be expressed voluntarily and in full awareness of the legal consequences. The person sought shall have the right to legal counsel and if necessary, the requested Party shall ensure that the person sought has the assistance of an interpreter. (Article 4, paragraph 2).

The requested Party shall notify, as soon as possible and no later than ten days after the date of provisional arrest, whether or not the person sought has given his or her consent to extradition. In exceptional cases, where the requested Party decides not to apply the simplified procedure in spite of the consent of the person sought, it shall notify this to the requesting Party sufficiently in

advance so as to allow the latter to submit a request for extradition before the period of forty days established under the Article 16 of the Convention expires. If the person sought has given his or her consent to extradition, the requested Party shall notify the requesting Party of its decision with regard to the extradition under the simplified procedure within twenty days of the date on which the person consented. Surrender shall take place as soon as possible, and preferably within ten days from the date of notification of the extradition decision.

Fourth Additional Protocol to the European Convention on Extradition was adopted in Vienna on 20.09.2012. It amends and supplements a number of provisions of the Convention in order to adapt it to modern needs. These provisions concern, in particular, the issues of lapse of time, request and supporting documents, rule of specialty, transit, re-extradition to a third state as well as channels and means of communication.

*Lapse of time* is regulated in the Article 10 of the Convention. This Protocol replaces the Article 10 of the Convention and in Article 1, states that: "Extradition shall not be granted when the prosecution or punishment of the person claimed has become statute-barred according to the law of the requesting Party. Extradition shall not be refused on the ground that the prosecution or punishment of the person claimed would be statute-barred according to the law of the requested Party".

The Article 12 of the Convention is replaced with the Article 2 of this Protocol and it refers to the request and supporting documents. According to the Protocol: "The request shall be in writing. It shall be submitted by the Ministry of Justice or other competent authority of the requested Party. The request shall be supported by: a). a copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party; b). statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions, including provisions relating to lapse of time, shall be set out as accurately as possible; and c). copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his or her identity, nationality and location."

*Rule of specialty*: The rule of specialty is regulated on the Article 14 of the Convention. The Article 3 of this Protocol, replaces that Article and regarding the rule of specialty, foresees as follows: "A person who has been extradited shall not be arrested, prosecuted, tried, sentenced or detained with a view to the carrying out of a sentence or detention order, nor shall he or she be for any other reason restricted in his or her personal freedom for any offence committed prior to his or her surrender other than that for which he or she was extradited, except in the following cases:

a). when the Party which surrendered him or her consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention. The decision shall be taken as soon as possible and no later than 90 days after receipt of the request for consent. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken;

b). when that person, having had an opportunity to leave the territory of the Party to which he or she has been surrendered, has not done so within 30 days of his or her final discharge, or has returned to that territory after leaving it.

*Transit:* Transit is regulated with the Article 21 of the Convention. Article 5 of this Protocol replaces the Article 21 of the Convention and foresees as follows: “Transit through the territory of one of the Contracting Parties shall be granted on submission of a request for transit, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention. The request for transit shall contain the following information: a). the identity of the person to be extradited, including his or her nationality or nationalities when available; b). the authority requesting the transit; c). the existence of an arrest warrant or other order having the same legal effect or of an enforceable judgment, as well as a confirmation that the person is to be extradited; d). the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment; e). a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought. The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his or her life or freedom may be threatened by reason of his or her race, religion, nationality or political opinion.

*Channels and means of communication:* In regard with the Article 6 of this Protocol, the Convention shall be supplemented by the following provisions: “For the purpose of the Convention, communications may be forwarded by using electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity. In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents. The use of the International Criminal Police Organization (Interpol) or of diplomatic channels is not excluded.”

## ***2.1 The Principles of Extradition***

In the international law and in positive legislation of contemporary states there are few principles that must be fulfilled and respected during the extradition procedure. Those principles protect human rights during the extradition process.

In the positive legislation of contemporary states as well as in the international law and in legal literature, are mentioned those principles: the principle of reciprocity, the principle of double incrimination, *non bis in idem* and the principle of specialty<sup>9</sup>.

*The principle of reciprocity* means that the extradition process might be pre-conditioned with a guarantee of identical acting of the requested Party<sup>10</sup>. Substantially, this principle verifies the principle of equal rights and obligations of all states. It is also mentioned that reciprocity is a premise against extradition for political offences<sup>11</sup>.

*The principle of double-incrimination* requires that the offence committed, which for an extradition is sought, must be foreseen as a criminal offense in both domestic legislations (domestic legislation of requested Party and domestic legislation of requesting Party)<sup>12</sup>.

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<sup>9</sup>Kambovski, pp. 170; There are authors that instead of the principal *non bis in idem*, mentions the principle of extraditable offences, see: Ismet Salihu, *E drejta penale ndërkombëtare*, Prishtinë, 2005, pp. 145

<sup>10</sup> Ibid, pp. 170

<sup>11</sup> Salihu, pp. 145

<sup>12</sup> Kambovski, pp. 170



*Non bis in idem principle* means that the person whose extradition is sought has not previously been finally convicted or acquitted of the offense.

*The principle of specialty* means that a person extradited to a requesting state must not be proceeded against, sentenced, detained, re-extradited to a third state, or subjected to any other restrictions of personal liberty in the territory of the requesting state for any criminal offense committed before the extradition other than: a). a criminal offense for which extradition is granted; or b). any other offense in which the requesting state consents<sup>13</sup>.

Other situations related to the extradition

*Concurrent Requests:* One person might be sought from different states for the same criminal offense or different criminal offences. In such situations, where several states request the extradition of the same person for the same criminal offense, priority must be given to the state of which the person is a national. Where the person's state of nationality does not request extradition, priority must be given to the state in whose territory the criminal offense was committed and where the person's state of nationality does not request extradition and the criminal offense has been committed in the territory of several states or where the site of commission is not known, priority must be given to the state that requested extradition first<sup>14</sup>.

*Costs of extradition:* Extradition usually causes costs for the parties. In bilateral treaties, usually it is foreseen that each state cover the costs that are caused in its territory<sup>15</sup>.

## ***2.2 Extradition by the Law on International Cooperation in Criminal Matters of the North Republic of Macedonia<sup>16</sup>***

In the Republic of North Macedonia, the extradition is regulated by the Law on International Cooperation in Criminal Matters of the Republic of North Macedonia (that was adopted on 14.09.2010). Extradition, is one of the forms for international co-operation (Article 4) and it is permitted if criminal offense, which for the extradition is sought, is punishable under the domestic law by a term of imprisonment exceeding one year (Art. 50, paragraph 1) and if the extradition is sought for enforcement of a penalty of imprisonment, then the extradition must be granted if for its enforcement, remains at least four months (Art.50, paragraph 2). The principle of specialty is one of the main principles of the LICCM<sup>17</sup>. According to the LICCM, there are many assumptions for extradition, such as: a). the person whose extradition is required, must not be a citizen of North Macedonia; b). his/her identity is verified; c). the criminal offence, which for the extradition is sought, must not has been committed within the territory of North Macedonia, against North Macedonia or Macedonian citizens; d). the criminal offense for which the extradition is requested, must be a criminal offense according to the legislation of Macedonia and the requesting Party (double incrimination); e). the prosecution or execution of punishment is not barred because of the lapse of time; f). nonbis in idem; g). there are sufficient evidences on

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<sup>13</sup>O'Connor- Rausch, pp. 45

<sup>14</sup> Ibid, 457

<sup>15</sup> Salihu, pp.176

<sup>16</sup> Zakon za Megjunarodna Sorabotka vo Krivichnata Materija, SluzhbenVesnik 124/10

<sup>17</sup> In its Article 51 it is foreseen that:” The extradited person may not be prosecuted, tried or sentenced to a punishment or any other measure of restraint of liberty or extradited to another state for any crime committed before extradition, and which is not subject to extradition, except in the following cases if: 1) the competent authority has given an extradition permit and has submitted documents in accordance with Article 58 of this Law together with a statement on the minutes of the extradited person or 2) the person, although there has had an opportunity to release within 45 days, he/she did not leave the territory of the state in which is extradited, or if after leaving its territory, he/she has returned back.

the level of reasonable suspicion that the person has committed the criminal offense or there is a valid judgment; h). the person has committed the crime when he/she already was 14 years old and i). the person whose extradition is requested has been tried in absentia and the requesting state gives guarantees that the person will be tried in his/her presence (Art.52). Extradition is not permitted for political offences (political offense is not taking or attempted taking of life of a Head of State or his family members, terrorism and international crimes). This Law does not apply in cases of violation of military duties (art.54). The extradition shall not be granted if, in the requesting state, for the committed crime is prescribed the death penalty, unless the requesting state provides assurance that the death penalty will not be imposed or carried out. LICCM considers the fiscal offences and gives them special space within its text (Art. 56). The extradition for fiscal offences must be granted, if the offence according to the domestic law corresponds with the offence of the same kind in the requesting state and extradition cannot be refused if, in accordance with domestic legislation, that kind of tax or fee are not binding or because there are no taxes, fees, customs or foreign exchange regulations of the same kind as in the requesting state.

*Competent authority:* The Minister of Justice brings a decision for granting or not granting the extradition. The extradition will not be granted if the person sought has been tried in absentia and the requesting state does not provide sufficient assurance that he will be re-tried with respecting his right on defense, if the requesting state does not provide sufficient assurance that he/she will not be object of torture or any other form of cruel, inhuman or degrading treatment or death punishment in the requesting state. On the proposal of the Minister, the Government of the Republic of North Macedonia may not grant an extradition, if there exists justified interest for the Republic of North Macedonia.

### 3. Conclusions

1. Extradition is a process that helps in combating crime and therefore, has been regulated with domestic and international acts.
2. Even though the extradition procedure is regulated by different legal acts, the decision of surrendering or not the perpetrator remains an moral obligation for the requested party, and it can decide not to grant an extradition, even though there have been fulfilled the legal provisions.
3. Extradition cannot be granted for minor criminal offences and they are excluded from extradition (ECE). States are not obliged to grant extradition for their nationals Political offences, military offences as well as if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons. Other situations in which the requested party has the right to refuse the extradition are: pending procedure for the same case, non bis in idem, lapse of time and the capital punishment.
4. The principle of specialty, non bis in idem, the principle of double incrimination and the principle of reciprocity are main principles of extradition process.
5. Main legal document that regulates the extradition procedure in Europe is European Convention on Extradition (1957). It has four Addition Protocols. The first one, was

adopted in 1975 and defines the political offences and non bis in idem principle. The Second Addition Protocol was adopted in 1978 and aims, in particular, to include fiscal offences among the category of offences for which a person may be extradited under the Convention. This Protocol also contains additional provisions on judgments *in absentia*, amnesty and national authorities dealing with the request for extradition. Third Additional Protocol was adopted on 2010 and tempts to simplify the procedure for extradition when the person sought consents to extradition. Fourth Additional Protocol to the European Convention on Extradition was adopted in 2012. It amends and supplements a number of provisions of the Convention in order to adapt it to modern needs. These provisions concern, in particular, the issues of lapse of time, request and supporting documents, rule of specialty, transit, re-extradition to a third state as well as channels and means of communication.

6. Main document that regulates the extradition process in Macedonia is the Law on International Cooperation in Criminal Matters that was adopted in 2010.

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