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TERMINOLOGICAL ASPECT OF THE CONCEPT OF "EXTRADITION" IN THE CONTEXT OF INTERNATIONAL LAW

This scientific study raises the issue of the terminological meaning of the concept of "extradition" in the context of international law. The author examines the main approaches to interpreting the term "extradition" that have developed in legal doctrine and identifies existing discrepancies in the use of this term in legal science and international legal acts. Particular attention is paid to the analysis of synonymous terms "surrender," "transfer," and "delivery," which are used to define extradition. The similarity of these concepts is revealed, but at the same time it is emphasized that they are not identical. The author proposes to consider the institution of extradition as an independent and comprehensive institution of international law.

The article draws attention to the fact that the etymology of the term "extradition" consists of the history of its origin and development. Historical research shows that the first attempts to regulate issues of extradition of criminals from one state to another can be found even in ancient states. However, the institution of extradition as it exists today took shape in the 18th century. Overall, an analysis of the historical aspects of the institution of "extradition" provides a better understanding of the legal nature of this phenomenon of legal reality.

The importance of unifying terminology in the field of international cooperation in criminal matters was emphasized, since the ambivalence of the conceptual and categorical apparatus (conceptual framework) can lead to legal conflicts, which will only complicate the resolution of practical issues of extradition activities.

It has been concluded that extradition can be considered as a form of international legal assistance based on international treaties, principles of international law, and norms of national law, which consists in the surrender of a person by the state in whose territory he or she is located to a state that has grounds for exercising its jurisdiction, for the purpose of further criminal prosecution or to ensure the enforcement of a sentence.

Key words: *extradition, surrender, transfer, international cooperation, International Criminal Court, international law*

Шишацька Ю.О. Термінологічний аспект поняття «екстрадиція» в контексті міжнародного права

У науковому дослідженні порушується проблема термінологічного змісту поняття «екстрадиція» в контексті міжнародного права. Автор розглядає основні підходи до тлумачення терміну «екстрадиція», що сформувалися в юридичній доктрині, та виявляє наявні розбіжності у вживанні даного терміну у правовій науці та міжнародно-правових актах. Особливу увагу приділено аналізу синонімічних термінів «видача», «передача», «доставка», які використовуються для визначення екстрадиції. Виявляється схожість даних понять, але при цьому наголошується, що вони не тотожні. Автор пропонує розглядати інститут екстрадиції як самостійний та комплексний інститут міжнародного права.

У статті звернуто увагу, що етимологія терміну «екстрадиція» складається з історії його походження та розвитку. Історичні дослідження засвідчують, що перші спроби регулювання питань про видачу злочинців із однієї держави в іншу можна знайти ще в стародавніх державах. Однак інститут екстрадиції, як він існує сьогодні, сформувався в XVIII ст. В цілому аналіз історичних аспектів інституту «екстрадиції» дозволяє краще зрозуміти правову природу даного явища правової дійсності.

Наголошено на важливості уніфікації термінології у сфері міжнародного співробітництва в кримінальних справах, адже амбівалентність понятійно-категоріального апарату може призвести до правових колізій, що буде лише ускладнювати вирішення практичних питань екстрадиційної діяльності.

Зроблено висновок, що екстрадицію можна розглядати як засновану на міжнародних договорах, принципах міжнародного права та нормах національного права форму міжнародно-правової допомоги, котра полягає в видачі особи державою, на території якої вона знаходиться, державі, котра має підстави для здійснення своєї юрисдикції, з метою подальшого притягнення до кримінальної відповідальності чи для забезпечення виконання вироку.

Ключові слова: *екстрадиція, видача, передача, міжнародне співробітництво, Міжнародний кримінальний суд, міжнародне право*

Statement of the problem. It is impossible to imagine the modern world without cooperation and interaction between states in various spheres of activity. This is primarily due to the processes of globalization and integration, which "have gradually led to the transparency of borders between states, the free movement of capital, and the possibility of unhindered and virtually uncontrolled movement of people" [14], and hence to an increase in criminal activity. The institution of extradition, being an important institution of international criminal law, as well as one of the areas of international cooperation in the fight against crime, plays an important role in the administration of justice and the punishment of offenders.

State of research. Legal literature has always paid a lot of attention to the issue of extradition. Well-known domestic and foreign scholars, including Yu. Alenin, S. Andreychenko, M. Bassiotti, N. Boister, V. Butkevych, O. Vinogradova, O. Voloshchuk, G. Griff, G. Gilbert, N. Zelinska, V. Kolesnik, I. Lukashuk, V. Panova, M. Pashkovskyi, V. Popko, J. Rony, M. Ford, M. Kharvoniuk, and others, have made a significant contribution to the development of the conceptual foundations of the institution of extradition.

However, despite the relatively high level of research into the institution of extradition and the considerable attention paid by the international community to shaping its legal nature, there is no universally accepted concept of extradition in international law. The diverse interpretation of certain aspects of extradition in global practice has led to diverse interpretations of its components, and above all, of the very concept of extradition.

The purpose of the study is to analyse contemporary scientific and conceptual approaches to understanding the concept of "extradition."

Explanation of the main provisions. In legal science, the issue of defining terms that meet the requirements of accuracy, unambiguity, conciseness, consistency, and international harmonization is becoming increasingly important. This is particularly relevant to the concept of "extradition," the meaning of which is influenced by both international acts and national regulatory acts, reflecting different linguistic systems and legal traditions. At the same time, content analysis of scientific literature allows us to conclude that there is no unified understanding of extradition and its legal nature in legal doctrine.

The etymology of the term "extradition" consists of the history of its origin and development. The institution of extradition has undergone a significant evolutionary path of development, dating back to ancient times, although in its modern sense it began to take shape mainly in the 18th century. The first references to extradition can be found in the "Peace Treaty" signed by

Pharaoh Ramesses II and Hittite King Hattusilis III in 1296 BC, which stipulated that "if Ramesses becomes angry with his slaves when they revolt and goes to pacify them, the king of the Hittites must act in agreement with him... If one person, or two, or three, flee from the land of Egypt to go to the great prince of the land of the Hittites, the great prince of the land of the Hittites must seize them and order them to be sent back to Ramesses II, the great ruler of Egypt" [13, p. 86].

"The uniqueness of this historical and legal document fully justifies the attention paid to it in the study of extradition. The treaty regulated in detail the relations between the parties in matters of extradition of fugitives. This treaty is a copy of a translation from the original, written in Babylonian cuneiform, which was used for international correspondence at that time. This treaty is the first surviving document of its kind and is extremely important for the history of international legal relations and the establishment of extradition law. Both sides were exhausted by the long war, which lasted more than fifteen years. There were even uprisings in the Hittite army caused by the prolonged struggle. Both kings sealed an eternal peace and promised to help each other, to retain the countries they had conquered in Asia, and also undertook to extradite political fugitives to each other" [cited in 10, p. 157].

Historiographical literature provides many examples from the ancient history of China, Greece, Rome, and the Assyrian-Babylonian civilization. With regard to the Ukrainian state, analogues of the institution of extradition can already be found in the agreements between the princes of Kyiv and Byzantium, in particular those concluded by Prince Oleg (911), Prince Ihor (945), and Prince Sviatoslav (971), which provided for the procedure for the exchange and extradition of guilty persons, the resolution of issues of compensation for material damage, and the confiscation of the property of extradited persons. In particular, "the agreement of 945 stipulated that if any Greeks living under the authority of our empire commit a crime, you, Rusy, have no right to punish them, but at the behest of our empire, let the criminal receive his punishment" [3, p. 17].

A turning point in the history of the development of extradition as an instrument of international cooperation was the events associated with the Great French Revolution of 1789, which legally formalized the right to asylum. In the 19th century, the right to asylum gained universal recognition, and extradition took on the character of mutual assistance between states in the fight against crime. Gradually, international treaties and legislative acts on extradition began to be concluded. The first extradition law was the Belgian law of 1833, which served as a model for other European countries, including England and the Netherlands, to adopt special extradition laws. During this period, the number of extradition treaties increased and legal coordination in the fight against crime affecting the interests of several states was improved. In international practice, political crimes began to be excluded from the scope of extradition, extraditable crimes were defined, and the principle of non-extradition of own citizens was established.

The term "extradition" comes from the Latin extraditio, which literally translates as "transfer from." This term was first enshrined in law in France and provided for the procedure of forcible return of a fugitive subject to the sovereign. Today, the meaning and significance of this term in relation to extradition has changed. In legal doctrine, several points of view have emerged regarding the legal nature of extradition, ranging between two opposing positions: the position based on the distinction between the concepts of "extradition" and "surrender"; and the position that equates extradition with surrender.

Scientists who distinguish between the concepts of "extradition" and "surrender" proceed from the assumption that these are not identical concepts and that extradition should not be reduced to the surrender of a person; it is argued that, arising from the institution of surrender, the institution of extradition has undergone significant transformation. The rules relating to extradition clearly do not fit within the limits available to the institution of surrender.

The idea that the term "extradition" is synonymous with the term "surrender" has become widely accepted. An analysis of specialized literature confirms that this position is generally accepted. In particular, according to A. Dzhygyr, "at the doctrinal level, the synonymy of the terms "extradition" and "surrender" is indisputable, and, accordingly, their use in scientific literature is equally acceptable". In modern legal doctrine, many scholars interpret the concept of "extradition"

precisely from this position. Thus, according to S. Nesterenko, "extradition is a form of international legal assistance in criminal matters based on international treaties, generally accepted principles of international law, and norms of domestic law, which consists in the surrender of an accused person for the purpose of administering justice or a convicted person for the purpose of enforcing a court sentence provided by the state in whose territory the requested person is located, at the request of the state in whose territory, as a citizen of which, or against the rights and freedoms of whose citizens or its own interests, the person committed a crime" [9, p. 314].

A. Malanyuk uses the term "extradition", which he defines as "the activity of competent authorities based on generally recognized principles of international law, norms of international treaties, and domestic legislation, in the course of which a state, if it has suffered from a crime or if the crime was committed on its territory or by its citizen, requests and receives the accused, defendant, or convicted person from the state in whose territory he or she is located, for the purpose of bringing him or her to criminal justice or enforcing a sentence, or considers the request of a foreign state and transfers the requested person" [8, p. 44].

The Great Ukrainian Encyclopedia (Velyka ukrainska entsyklopediia) contains the following definition: "the surrender of criminals, extradition, the surrender of a person who has committed a crime by one state (the requested state), in whose territory that person is located, to another state (the requesting state), in whose territory the crime was committed or of which that person is a citizen" [1, p. 26].

An analysis of international and national legal acts regulating extradition issues shows that the term "surrender" is actively used both in the titles of documents and in their content. A striking example of this is the European Convention on Extradition of 1957, Article 1 of which contains the following provision: "The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order" (Article 1) [4]. In the Convention on Extradition of 1933, the term "surrender" is also used to define the procedure of transferring a person [5]. The Criminal Procedure Code of Ukraine defines extradition as the procedure for surrendering "a person to a state whose competent authorities are seeking that person for criminal prosecution or enforcement of a sentence" (Article 541) [6].

In international law doctrine, this approach is explained by the fact that the institution of extradition arose from the institution of surrender and did not gain recognition. As a result, further improvement of the regulatory and legal framework for extradition, as well as the resolution of many practical issues related to extradition activities, are largely complicated by adherence to old views and concepts.

Based on the analysis of the definitions presented, it can be concluded that extradition and surrender are similar, but not identical. The institution of extradition is an independent, comprehensive, and multi-system institution of international criminal law, which has its own tasks, objectives, and functions, that are not absorbed or duplicated by the institution of surrender. The norms relating to the institution of extradition clearly do not fit within the limits currently available to the institution of surrender.

It is important to note that in domestic legal doctrine, the concept of "extradition" is also defined through the term "transfer," which refers to a slightly different form of interstate cooperation in the field of law enforcement, distinct in its legal nature.

The classic definition, which is accepted as generally accepted and referred to by scholars in their research, was formulated in the US Supreme Court decision in Terlinden v. Amnes, which established that "extradition means the transfer by one nation to another of a person accused or convicted of a crime committed outside the territory of the former and within the territorial jurisdiction of the requesting party, which is competent to try and punish him" [cited in 9, p. 312].

L. Maksymiv interprets the concept of extradition as "procedural activity based on the principles and norms of international and national law related to the provision of legal assistance by states, which consists in the transfer of a person to the state in whose territory a criminal offense

was committed, or to the state of which the person who committed the criminal offense is a citizen, or to the state that suffered the most from the criminal act, whose competent authorities are searching for this person to bring them to criminal responsibility or to enforce a sentence [7, p. 275].

The position of O. Voloshchuk and V. Kolesnyk seems very close to the above. They understand extradition as "a process that includes a series of consecutive actions by states to transfer a person who is on its territory to another authorized subject of international law on the basis of international agreements and domestic national legislation, in compliance with generally recognized principles of international law, for the purpose of bringing that person to criminal responsibility or enforcing a sentence handed down by a state court" [2, p. 9].

V. Popko, analyzing the etymology of the terms "surrender" and "extradition," concludes that they have significant differences. Thus, "extradition differs from surrender primarily in terms of content, since it includes the stage of initiating the transfer (surrender) of a person; the process of decision-making on this issue by the competent authorities of two states; the stage of appealing the decision; the actual process of transfer (surrender) of a person; legalization of the sentence by the court of the state that accepted the person, etc." [11, p. 21].

An analysis of approaches to defining the concept of "extradition" (surrender) presented in scientific literature shows that most researchers define it using the term "transfer," which in international practice refers to a procedure that is less burdened by the legal obstacles inherent in extradition. Discussions regarding the distinction between the concepts of "extradition", "surrender" and "transfer" were resolved with the adoption of the Rome Statute of the International Criminal Court, Article 102 of which states that "surrender" means the delivering up of a person by a State to the Court, pursuant to this Statute, and the term "extradition" means the delivering up of a person by one State to another as provided by treaty, convention or national legislation [12]. Thus, in the case of "transfer", we are talking about the transfer of the accused by the national judicial authorities to the International Criminal Court with the right to administer justice in relation to a citizen of their own state. Extradition (surrender), on the other hand, provides for the possibility of a state (rather than a court) obtaining both the accused for the purpose of administering justice and the convicted person in respect of whom a sentence has already been passed. Another criterion that allows us to distinguish between the procedures of extradition and transfer is compliance with the rule of "dual jurisdiction" in the extradition procedure, whereas compliance with this rule is not mandatory in the procedure of transfer.

Thus, the term "transfer" is used in international practice to define procedures that are less burdened by legal obstacles inherent in extradition procedures. This term is used to define the following procedures: a) the transfer of convicted persons to their country of nationality to serve their sentence; b) the transfer of persons under a European arrest warrant; c) transfer by national authorities or courts to the International Criminal Court or international tribunals of an accused person for the purpose of administering justice.

Continuing with the issue of terminology, it would also be good to clarify the use of the term "delivery" to interpret the concept of "extradition". Unlike other terms that are synonymous with the concept of "extradition", the term "delivery" has no independent legal meaning and is used in international practice to define additional actions within the framework of extradition.

Based on the analysed approaches to understanding the phenomenon of legal reality under study, it should first be noted that referring to the same institution as both extradition and surrender introduces differences in the understanding, interpretation and application of extradition in international law doctrine and law enforcement practice. In this regard, it is appropriate to use a term that best corresponds to the procedures for the surrender/transfer/delivery of persons at the request of one state to another state where the person was hiding, for the purpose of further criminal prosecution or to ensure the enforcement of a sentence, and the term "extradition" seems to be the most comprehensive.

Conclusions. Analysis of doctrinal and dogmatic approaches to defining the concept of "extradition" in the context of international law leads to the conclusion that extradition can be regarded as a form of international legal assistance based on international treaties, principles of

international law and norms of national law, which consists in the surrender of a person by the state in whose territory he or she is located, to a state that has grounds for exercising its jurisdiction, for the purpose of further criminal prosecution or to ensure the enforcement of a sentence.

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