

“Agreement of Extradition” between Albania and Italy

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Abstract

In the framework of international cooperation, the Republic of Albania has responded positively to cooperation in penal field and in particular regarding extradition. The agreement was signed in 2008 and entered into force on August, 01.2011, after previously ratified by the parliaments of both countries. This agreement follows the European Convention on Extradition, 1957 and the European Convention on legal assistance for penal cases, 1959. According to the above agreement Republic of Albania allow extradition of its citizens on the basis of the principle of reciprocity. The purpose of this paper is treating extradition, not just as a process of transfer / delivery of a place in another, a person convicted of, or who is subject to penal prosecution as a legal process that combines rights and obligations and to highlight some problems in the extradition process.

Keywords: extradition agreement, code of Penal Procedure of Albania, Code of Penal Procedure of Italy,

1. Introduction

In the framework of international cooperation, the Republic of Albania has responded positively to cooperation in penal field and in particular regarding extradition. It is currently high contracting party, in a number of conventions, which regulate important areas in the field of international cooperation in criminal matters, which have provided ways of extradition cases and for certain types of penal acts. Some of the conventions ratified by national legislatures are::

- Convention "On reciprocal legal assistance in penal field"¹;
- Convention "On Suppression of Terrorism "²;
- Convention "On the transfer of proceedings in penal matters"³;
- European Convention "On Human Rights "⁴,
- Rome Statute of the International Penal Court ⁵, etc.

According to European Convent "For "⁶, extradition is applied in three directions:

- For transfer of persons for whom prosecution has begun in the state of research.
- To implement a security measure, according to the decision of the authority of the state of searching
- To put in execution, a penal decision of final sentence given by the courts of the requesting State.

In the framework of international cooperation in penal matters Republic of Albania and Italy have signed a bilateral agreement⁷ for the mutual extradition, the citizens declared as wanted by justice of the respective countries. The agreement was signed in 2008 and entered into force on August, 01.2011, after previously ratified by the parliaments of both countries. This agreement follows the European Convention on Extradition, 1957 and the European Convention on

¹ Ratified by Law no. 8498 dated 10.06.1999

² Ratified by Law no. 8642 dated 13.07.2000.

³ Ratified by Law no. 8497 dated 10.06.1999

⁴ Ratified by Law no. 8322 dated 02.04.1998.

⁵ The Rome Statute, signed by the Republic of Albania on July 18, 1998, ratified by Parliament by Law nr.8984, dated 23.12.2002.

⁶ European Convention "On Extradition", December 13, 1957, ratified by Law no. 8322, dated 04.02.1988

⁷ Agreement between the Republic of Albania and Republic of Italy, in addition to the European Convention on Extradition of 13 December 1957 and of European Convention on Legal Assistance in Penal issues of 20 April 1959, which aims to facilitate their implementation, ratified by Law No. .9871, dated 02.11.2008, promulgated by decree nr.5628, dated 22.02.2008 of the President of the Republic of Albania.

legal assistance for penal cases, 1959. According to the above agreement Republic of Albania allow extradition of its citizens on the basis of the principle of reciprocity.

2. Extradition according to Albanian legislation.

Extradition is a form of international cooperation in penal field, which consists of the submission of a person by a State in which is located in another state must judge or the execution of a sentence already given⁸. Extradition may be cognitive and executive. In the case when the person surrender is made in order to put to justice in the country that requires dealing with cognitive extradition. While in the other case, when extradition is requested that the person sought to be extradited has been tried, and penalty arising from this judgment, to suffer in the territory of the country seeking extradition, extradition is executive.

Based on Albanian procedural legislation, the extradition mean::

"...mutual submission under certain terms and conditions, of persons prosecuted for a penal act, or is required to order the execution of a judgment of conviction, or security measure, the judicial authorities of the requesting party"⁹.

But according to national legislation, as against a person who is abroad, is a security measure, to restrict the freedom in a criminal proceeding against him or given a prison sentence final, Minister of Justice, may submit a request for his extradition, based on the information and documents submitted by the General Prosecutor. The request should be forwarded through the Ministry of Foreign Affairs¹⁰, and must be accompanied by additional documentation, which includes these documentary materials, binding, the following listed below:

- "a). Original or certified copy of the authentic, the decision whether a sentence to be implemented, whether it's a custody order, or any other act that has the same active force, issued under the rules contained in the law of the requesting party.*
- b). A statement of facts, on the basis of which extradition is sought, such as the time and place of performance, time and place of the offenses in question, their legal qualification, and references to legal deposits that are applicable in these cases, which should be implemented as efficiently as possible, and a full report on the procedural acts, on the basis of which the person identified as the author of the event.*
- c). A copy of the applicable legal provisions, or if this is not possible, a statement of the applicable law, as well as a more accurate description of the wanted individual features, as well as any information that can serve to determine his identity and citizenship in relation to the evidence which fully identify the person, such as photos, passport card, fingerprint records of tracks, etc."¹¹.*

Code of Penal Procedure makes a detailed regulation with regard to the mode of application of extradition. According whose extradition provided two forms: Extradition to outside Albanian territory, or passive extradition and extradition from Albanian territory, or active extradition.

According to the Constitution of Albania, extradition requires the fulfillment of two conditions required for allowing him:

First, that extradition is expressly provided for in international agreements to which Albania is party¹²;

Second, extradition undergo to judicial review. Only if the court decides in favor extradition, the latter can be implemented in practice.

If the requesting State is a signatory or a contracting party to the Convention on Extradition and its three additional protocols, or if there is a bilateral agreement between the requesting state and the Albanian state has the right to request the extradition of a citizen who is in the territory of Albania. If the above condition is not fulfilled in accordance with Article 39/2 of the Constitution, Article 11 of the Penal Code and Article 10 of the Code of Penal Procedure, extradition may not

⁸ The definition given by Article 488 of Code of Penal Procedure

⁹ European Convention "On Extradition" makes a detailed regulation with regard to international cooperation on the issue of extraditions, and Code of Penal Procedure of the Republic of Albania in accordance with this Convention provides for extradition in articles 485-505.

¹⁰ Code of Penal Procedure of the Republic of Albania, approved by Law No. 7905, dated 21.03.1995, as amended by Law no. 9276, dated 16.09.2004

¹¹ Interpretation reflected in the Code of Penal Procedure, Article 489, which refers to the European Extradition Convention, 1957, Article 12.

¹² Defined the Penal Code, Article 11, which is in full compliance with Article 39 of the Constitution.

be granted and the Ministry of Justice without initiating any judicial procedures before the case must refuse a request for extradition¹³.

Legitimization of extradition is foreseen as the Albanian legislation and foreign, according to which extradition is allowed when the offense that is the object of the request for extradition is also predictable by the laws of both countries, the requesting state and the state requested. So if you are not satisfied when one of these two conditions, the extradition can not be legitimized. Also legislator has foreseen those conditions, the existence of which does not allow the extradition legitimized, where according to which extradition is not allowed when¹⁴:

- a. "If the person to be extradited is an Albanian citizen, unless the agreement provides otherwise";
At this point, on the one hand envisaged prohibition of extradition of Albanian citizens, and on the other hand, there is room, that such a prohibition is not absolute, providing opportunity through bilateral agreements, the Republic of Albania, allow extradition of its nationals outside the country. This is a part that is regulated by agreements between states.
- b. "If penal act that constitutes the subject of the extradition request has a political or military character";
In our opinion, this prohibition is justified because of the problems of these offenses, and the refusal of extradition consists in fact of prejudice from the beginning and can not effectively serve the purpose that the extradition itself, because in this case it comes to performing more specific offenses, which are considered to be resolved within a certain state, and can not receive, international character.
- c. "When there is reason to suspect that the person sought to be extradited will be prosecuted, punished or required because of his political, religious, national, racial, or ethnic convictions etc";
This kind of refusal, apply to extradite, when there are conviction, or reasonable suspicion that the person sought to be extradited, will be prosecuted, punished or asked for political, religious, national, racial or ethnic origin. The state remains without prejudice asked to evaluate the circumstances to determine whether we are faced such a prohibition or not.

European Convention "On Extradition" and the Code of Penal Procedure clearly define and other restrictions regarding extradition of citizens, which does not allow extradition in cases when:

- a. the wanted person has committed a penal act in Albania.
- b. proceedings has started or is judged in Albania, even though the penal act is committed abroad.
- c. for penal act is given amnesty
- d. the requested person, is Albanian citizen, and there is no agreement, to foresee otherwise.
- e. is prescribed, penal prosecution, or penalty required by state.

Point "d" of the preceding paragraph is the purpose for which the Albanian state and the Italian state have signed and ratified bilateral agreement¹⁵ for the extradition of citizens on the basis of reciprocity, without restrictions on their nationality.

3. Italian legislation on extradition

Republic of Italy is high contracting partner to the Convention of the Council of Europe "On Extradition", and other relevant documents in connection with extradition. Extradition procedures are defined in the Code of Penal Procedure, Articles 700 to 722. Understanding extradition provided for in Article 697 of this code, which is defined as the submission of a citizen, a foreign state, to execute a sentence of imprisonment or an act proving its a penal act. conditions, which must meet a requirement for extradition are anticipated in Article 698 of this code, while Article 699 provides specialty rules relating to those specific conditions that must fulfill a request for extradition order for it to be acceptable.

Italian penal procedural legislation provides that the decision to extradite a foreigner citizen can not be given without favorable decision, the Court of Appeal¹⁶, and Article 703, provides for decisions of the Prosecutor General, who

¹³ The combination of the above mentioned articles, legitimate, allowing extradition in the absence of any of the conditions specified in these provisions, extradition may not be granted.

¹⁴ Penal Code of Republic of Albania, Article 11.

¹⁵ Agreement between the Republic of Albania and Republic of Italy, in addition to the European Convention on Extradition of 13 December 1957 and of European Convention on Legal Assistance in Penal Affairs of 20 April 1959, which aims to facilitate their implementation, ratified by Law No.9871, dated 02.11.2008.

¹⁶ Article 701 of the Penal Procedure Code provides that Italy, the competent court to review extradition cases is the Court of Appeal, while Article 704 provides for the procedure of the court.

receives a request for extradition by the Ministry of Justice, requires the foreign competent authority, through the Ministry of Justice, the necessary documents and information, and duty within three months from the date the application by the Ministry of Justice is passed to court review,¹⁷ which has the obligation to communicate to the side of the hearing date ten days prior to her room and put in counseling after receiving all the information and after hearing the parties on whether to permit the extradition, and the decision is in favor extradition appointed date of delivery of the person to be extradited.

The decision of the Appeal Court is subject to appeal to the Court of Cassation by the person concerned or his representative, the General Prosecutor and the representative of the requesting State¹⁸. Suspension of delivery of the person requested to be extradited provided for in Article 709, under which the suspension applies if the person should be judged on the territory of the requested State, or will decrease the penalty for crimes committed before or after the crime, to which extradition is given, however, the remaining part of the sentence (for a penal act other than that for which extradition is requested) the person may suffer in the requesting state.

Re-extradition of a person, that extradition from the requesting State to a third country if the parties agree, that after requesting State has obtained the consent of the requested State, provided for in Article 711 and Article 712, regulates the transition predicting the transit of the extradited from one country to another should be done at the request of the Ministry of Justice of the requesting state, and this transit should not prejudice the sovereignty, security, or fundamental interests of the state in which it serves the transit of the extradited.

Security measures that can be applied to the person requested to be extradited, predicted in Article 713, which relate to the sequestration of evidence and items which belong to the offense for which extradition is requested. However, these measures can not be applied if there is reason to estimate that there are no conditions for issuing a decision in favor of extradition.

Provisional application of preventive measures foreseen in the second section of Article 714 of this code. Thus, provided that upon request of a foreign country and motivated request of the Ministry of Justice, the Court of Appeal may dispose of a provisional measure on the road before the extradition request is made, provided that the state seeking establishment of these premature measures, to express willingness and shows interest in subsequent extradition of this person.

Italian penal procedural legislation also provides for the possibility of arrest of a person by judicial police¹⁹. By law, the authority to make arrests in this case, as soon inform the Minister of Justice, and no later than 48 hours after the arrest, the latter informs the President of the Court of Appeals, which within 96 hours of arrest gives Ministry of Justice information about the reasons for not releasing. As regards the possibility of revocation of this security measure by the Ministry of Justice, the legislation provides that in such a case the person can not be held for more than ten days in isolation.

4. Extradition agreement with Italy

The Republic of Albania has ratified extradition agreement with Italy²⁰ under which the contracting parties accept the extradition of its citizens on the basis of reciprocity in accordance with the norms and requirements of the the European Convention "On Extradition" also specifying authorities to follow the procedures.²¹ The purpose of the parties, relating primarily to facilitate the implementation and completion of the convention on extradition. Both states waive the right to refuse delivery of the respective nationals as provided in Article 6 paragraph "1" European Convention "On Extradition". Under the agreement, the parties can not establish citizenship as a reason for refusal of delivery²².

The agreement at issue, in its Article 18 "Extradition of citizens" provides:

¹⁷ Article 700-722, Codice Penale e di Procedurale Penale e leggi complementari, Giustino Gatti, Rafeale Marino e Rossana Petrucci, edizioni Simone 1995.

¹⁸ Article 706 provides for such a possibility of recourse to the Court of Cassation.

¹⁹ Section 715 provides that in cases of emergency, authorizing judicial police to arrest and seizure of the person, and the seizure of objects that have served to carry the penal act, or are its product.

²⁰ Ratified by Law no. 9872, dated 11.02.2008.

²¹ Article 18, paragraph 3 of the agreement provides that extradition requests are made directly between the central authorities: the Republic of Italy by the General Directorate of Penal Justice, Office II, the Ministry of Justice of the Republic of Albania and the Ministry of Justice Directorate general Justice Issues.

²² Article 18, paragraph 2 of the agreement.

"...The Contracting Parties undertake, in any particular case, to submit their citizens who are under penal investigation by one of them for committing of penal acts or who are wanted for serving the sentence or to a restrictive measure, in accordance with the norms or requirements of the European Convention "on Extradition." contracting parties can not establish citizenship as a reason for refusal of delivery.²³

Extradition requests made directly between the central authorities. For the Republic of Italy by the General Directorate of Penal Justice, Office of the Ministry of Justice for the Republic of Albania, Ministry of Justice, General Directorate of Justice Issues".

5. Some problems in extradition procedures

Facing of the police structures with lack of infrastructure. This relates to, without full information, followed by the signatory parties to the agreement above, complete the identification of the person for which the extradition application.

Often lacking, cards fingerprint records to identify tracks based on papillary, lack these in the requesting state or in the state required, because it may happen that the person in question can not be coupled to the police ever for them to undergoing procedures fingerprint records.

Lack of infrastructure. It also refers, National Civil Status Register , which identifies only the actual data of the person, and there is no information about his previous generalities. There are many recorded cases, that various persons with criminal or penal precedent for justice in order to avoid changing their generality, such as name, surname, date of birth etc. even., Which makes it difficult to identify them immediately.

The speed in the implementation of procedures. Often brings problems in extradition proceedings. This is because not happen often, persons arrested for the purpose of extradition abroad, on the basis of the request made by the Italian or vice versa, but the requesting State does not respect legal deadlines laid down in the European Convention on Extradition. This fact is used by the defense of the person to seek his immediate release.

Deficiencies in the dossier. It must be said that, in many cases, failed attempt by the Albanian authorities for the extradition of its nationals from abroad, due to deficiencies dossier sent to the extradition of these citizens occurred outside the territory of Albania.

Courts- different stands for analogous cases. Another problem highlighted recently is the fact that the courts hold different attitudes to the analogous cases, that there is a unifying decision of judicial practice.

6. Conclusions

Bilateral agreement was necessary because, Albania and Italy are two neighboring countries, and the fight against crime requires advance forms of cooperation, and this promotion can find expression, in allowing mutual extradition of nationals of the two neighboring countries . This agreement has been ratified constitutes an important step in the fight against crime.

It is a common interest of the parties that legal aid be made between them so quickly and efficiently, in accordance with fundamental principles of their domestic law, and respecting individual rights and principles recognized by states²⁴.

From this brief analysis on how the regulation of extradition can say that makes a prediction almost identical to Italian legislation, as well as Albanian legislation.

In many cases, the competent Albanian authorities have shown determination and seriousness in pursuing extradition procedures most wanted by the Albanian justice, which has proved successful initiatives for the extradition of these citizens.

Until today the agreement has worked more for the extradition of its citizens who are wanted by Italian authorities to investigate or to be sentenced in Italy, and returned to Albania in order to avoid prosecution. There are numerous cases that Albanian citizens have benefited from the absence of a bilateral extradition treaty with Italy, until August 1, 2011 period in which the agreement came into force.

²³ Article 6 paragraph 1 of the European Convention "On Extradition" predicted that ratifying states have the right to waive extradition of their citizens, leaving the possibility that such an issue, states can dispose based on reciprocity..

²⁴ Individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950

7. Recommendation

- Improving infrastructure available to law enforcement agencies.
- Continuing legislative and structural reforms to successfully perform the required alignment with standards.
- Fulfillment of all obligations to partners, regardless of cost.
- Simplification of procedures with the aim of shortening the time limit.
- Continuation of efforts to sign bilateral agreements, including those for the extradition of its citizens.
- The unified judicial practices.

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