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Role of extradition as a legal tool to fight drug-crimes

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Abstract

Extradition as a tool of legal assistance between states has existed since the creation of the first states, though not in the form that appears today. Today we live in a time when crime has reached a high degree of organization. However, previously, we experienced a high degree of perfect criminality, and notably, the emergence of modern trends of crime, especially drug crime. For this reason, it is essential that we wage an effective war against drug-crimes. To reflect on the role of extradition and a tool of inter-state legal assistance, the following research questions are posed: *How important is extradition to achieve the aim of Republic of Albania in combating drug-crimes? Can it be considered that the fight against drug-crimes is successful without the use of extradition as a tool of legal assistance?* The purpose of this research paper is divided into primary purpose, which includes legal and procedural aspects of extradition, and in secondary purpose, which includes the role of extradition as a tool of legal assistance in Republic of Albania. Working methods applied in this paper are: historical methods focusing on the historical aspects of extradition itself, and also its role in combating drug-crimes; legal methods, data analyses method, such as analytical, statistical and comparative approaches. The analysis presented in this scientific paper is significant because it identifies and examines the

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role of extradition as a tool of inter-state legal assistance in combating drug-crimes, with special overview in Republic of Albania.

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Keywords: *Albania, extradition, drug crimes, cooperation, combating, states etc.*

1. Introduction

The rapid development of criminal phenomena with special emphasis on organized crime and international terrorism has obliged many countries to establish among each other bridges of cooperation with the aim in combating criminal phenomena by giving each other mutual support. One of the forms of this kind of help is extradition. Application of extradition, aims to surrender or transfer suspected or convicted persons from a requested state into the requesting state. Regarding the history of extradition, it can be said that extradition has two periods of its development, the ancient and the modern period. It is believed that the oldest diplomatic document in history is the treaty of peace between the Ramesses II of Egypt and prince Hittite Hattusili, the treaty concluded in 1258 b.c, which contains provisions for the extradition of perpetrators of different kind of crimes (William, M, 2012). In ancient Greece and Rome, extradition has stopped, and this way it opened the way for the right on asylum even though a battle was developed, but the fear for the punishment from the god opened the way for the solution of the problems in political aspect (William, M, 2012).

Extradition treaties in this period were extremely rare, but it can be concluded that there were treaties although they have included narrow interests of the political elite, the best case is the year 1661 treaty between King Charles II of England and Denmark. The purpose of entering this treaty was the father of King Charles II, Charles I, during the civil war of 1640 was executed, therefore the first thing King Charles II did, after coming into the power, was signing of a number of treaties with the monarchy and states, with the aim to punish "sovereign" enemies (William, M, 2012). Around 17th century up to the 19th century, the Chinese state known with the name Qing, has extradited different criminals from their neighbours such as Korea, Vietnam and Burma on basis of the principle of reciprocity (Rai, K. 1995). Below we will treat the history of extradition in two legal systems, into the Anglo-Saxon and Continental which are also the foundation of development in ancient and modern times. Since ancient times, extradition is considered a political tool to ensure the return of the enemies of the state into their country (Tracey. H, 1986). United States of America the first agreement on extradition has included in the treaty Jay and the United Kingdom in 1794 (Ann. P, 2002). Around the year 1800, in the USA, a need to combat transnational crime rose, which affected the removal of political criminal offenses and at the time a lot of treaties regarding extradition were achieved (Tracey, H. 1986).

Continental legal system has its own movements, as well as the Anglo-Saxon legal system and it can be argued that extradition in the continental system has built the first basic principles on extradition, always invoking full respect of freedoms and human rights. Taking into account that all transfers or extradition of persons are performed on demands based on political, military and religious motives, in 1834, France and Belgium entered the first extradition agreement, which agreement includes the first exemption for perpetrators of political offenses of that time (Tracey. H, 1986).

1.1. Definition of extradition

There are conventions, bilateral and multilateral agreements, laws and academic paperwork worldwide, which have treated the Institute of extradition, but each of them, have its own definition different from each other. Extradition is legal assistance in international criminal law, by which we mean the delivery of offender from a state (the state where he/she is) into another state (the state that requires), in order to develop a criminal procedure against him/her, or in order to execute the sentence imposed by the court with its final court decision (Salihu, I. 2005). In both cases, the requirement for submission of this person shall be considered as an exceptional case that does not fall in cases of hospitality. And if we refer to the Latin origin, the term "*extradere*" means forced surrender of a person to his sovereign. Extradition is usually done in cases where the perpetrator commits an offense and during criminal proceedings or even before during its stages, the perpetrator leaves the country with the aim to escape from justice. In such cases the state in which the person was found, surrenders the other state upon the request in order to bring the perpetrator before justice and in case of a final judgment for the perpetrator to suffer the criminal. Extradition is the main form of legal assistance between states in the field of criminal law and in a considerable way enables to combat crime at international level (Salihu, I. 2005). Therefore, the extradition by its nature carries within itself elements of international law, both procedural and criminal law.

1.2. Human Rights and extradition

Governments and individuals more and more are viewing the human rights as legitimate matters of foreign policy and the request of influence the foreign policy (including the allocation of foreign economic aid) of their own country, represents one of the main forms of promotion Human rights in other countries. Human rights in the last fifty years, have flourished but also in many countries and many states, the individual rights and freedoms are violated through various cases. Following the adoption of the Universal Declaration of the Human Rights (Universal Declaration of Human Rights, 1948), and International Treaty on civil and political rights (International Covenant on Civil and Political Rights, 1966), more and more is being done for the recognition and the condition of individual rights and the assertion of violations of these rights. Extradition and other forms of international cooperation pose serious problems as far as the constitution and human rights are concerned. In the US, appeared some principle irregularities that affect the respect of human rights, especially the treaties or bilateral agreements concluded by the US and other countries. In these agreements are set out some basic principles, such as *no bis en idem* principle for which it is thought that the influence in protection of this principle is impossible (Christopher, B. 2000).

1.3. The legal aspect of extradition in the international law

There are also a considerable number of international conventions ratified by many states dealing with extradition. Self ratification of these conventions and their protocols from different countries and their application is a legal obligation, so we can rightly say that the contribution of international criminal law is undeniable and very important with the sole purpose to combat criminal phenomena at national and international level.

Besides the various treaties or conventions there are also directives, then bilateral and multilateral agreements which regulate the extradition and its procedure. In agreement on extradition should be pointed out for which types of offenses to hand over the perpetrator and this is

done through these three methods, as follows: a) the method of enumeration, b) the method of elimination, and c) a general clause method (Aaron, F. 2008).

There are thoughts and theories as to whether it is the obligation of the different states to submit the perpetrator under international agreements or contracts or is their moral obligation that the perpetrators to be extradited or to be surrendered to the seeking state. For this there are two theories and these will be mentioned below: ***In the first group***, of scientists in the head with *Hugo Grotius*, other authors who think that the state to which the request is made, is obliged to deliver the wanted person or to punish him themselves and by this opinion formulated by *Hugo Grotius* himself with the known saying: “*aut dedere, aut punier*” (or submit or punish), (Dragan, J. 2005). ***In the second group***, the authors are of the opinion that extradition should be considered only as a moral obligation and this type of interstate cooperation can be realized only on the basis of agreements between states (Dragan, J. 2005). From contemporary theory and practice it can understand that more is accepted the opinion of the second group, according to which a state is obliged to hand over (extradite) the perpetrator to the other state only if it has the signed contract on extradition (Heiddi, V. Barrozo, 2004).

1.4. International Agreements (Treaties)

Different types of international documents drafted in written, are presented by different names. Most frequently they are called international agreements or treaties. But for various types of agreements different names are used, such as convention, pact, charter, statute, declaration, protocol, compromise, trust, concordat, modus Vivendi etc (Gruda, Z. 2007). Conventions that specifically address the extradition are: the European Convention on Extradition in 1957 and its four protocols as follows: First Additional Protocol, Second Additional Protocol, third Additional Protocol, fourth additional Protocol, Convention of Benelux's countries on extradition and the Arab League agreement on extradition, as well as other conventions which generally treat extradition such as the Geneva Convention, the Hague Convention, the Convention on Genocide 1948, and the Palermo Convention, etc.

1.4.1. Types of international agreements

In international law in general, there are several types of international agreements, but the actual division and the most important international agreements, is based on the number of parties that have signed these agreements, and therefore we have a total of two kinds: bilateral agreements (bilateral) and multilateral agreements (multilateral). Bilateral agreements or two parties agreements are most frequent form signed between states regarding the regulation of legal relations in public international law but also in private one with foreign element (Bilalli, A. & Kuqi, H. 2009). Bilateral extradition agreements are agreements in which are included only two states. United States of America are part of more than 100 signed bilateral agreements dealing with extradition (Yarnold, B. 1991). The difference between bilateral and multilateral agreements is in the number of countries that sign, enable signing at the later stage by the countries that have not signed on the occasion of their establishment, there is a possibility of accepting them with reserves (Bilalli, A. & Kuqi, H. 2009).

1.3. The role of extradition as assistance in combating drug-crimes in Albania

Albania has a political, economic, social role, very important not only in the Western Balkans, but also beyond. Albania's role in combating criminal phenomena is inevitable and necessary, therefore the ongoing efforts of the state have never stopped. The fight against drug-crimes, organized crime, trafficking in humans, terrorism and financial fraud is becoming more and more perfect, the seizure of a large number of drugs and the arrest of a large number of suspected offenders of various offenses, is giving the expected effects. Therefore, constructive and fast approach in the fight against crime represents a step forward in of Albania towards European Union membership. Albania is in borders with Greece, Macedonia, Kosovo and Montenegro, while in the west has exit in the Adriatic Sea, thus is an entry gate from Middle Eastern countries to Western Europe. After the fall of the communist system in Albania in 1990, Albania begin its journey to joining the European Union, but even tough about 25 years has past from that dark period, Albania still lacks, achieving not sufficient results, other than membership in NATO and visa liberalization by the European Union. All this is not random but due to political and security situation in which Albania has passed through, particularly high levels of criminality, especially large number of criminal groups of organized crime, not excluding the largest number of them in the field drug - crimes, has presented the biggest obstacle for Albania to continue its path towards joining the European Union and to be strong partner for the European community.

To achieve the success in combating crime and drug-crime in particular, all legal mechanisms should be established, not excluding the international assistance and legal cooperation in criminal matters. One of the assistance which states offer based on national legislation but also bilateral and multilateral agreements that have been ratified is the agreement on extradition or surrender of persons from one state to another state.

Drug –crimes as criminal phenomenon is quite clear that is not only performed in one place, so criminal groups in the field of drug -criminality use geographical position, political and economic conditions of countries such as Albania to achieve their goal on drug trafficking from the country of origin to the country of destination, thus committing criminal offenses in this area are not only performed in one state, even if it is the state of origin or destination, but characteristic of these offenses in the field of drug –crimes is that criminal activity is carried out in countries where narcotics have their transit route.

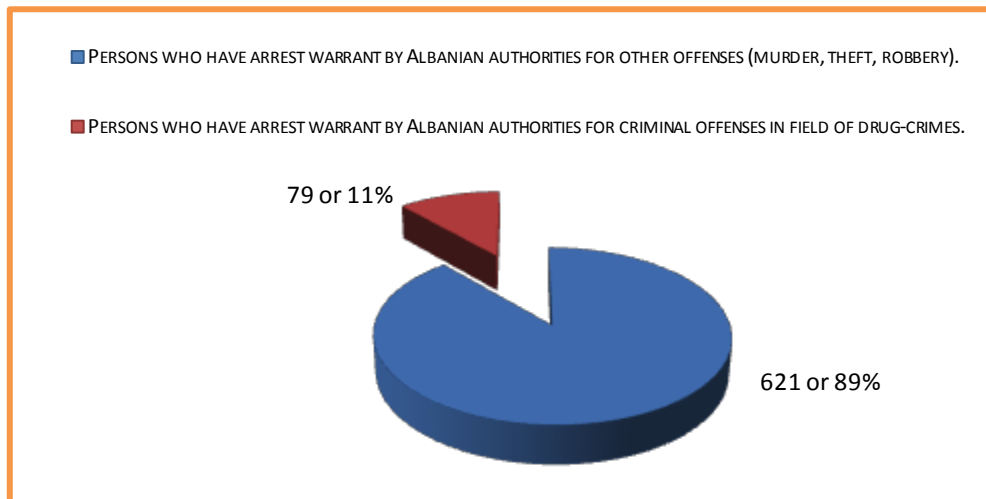


Figure 1. The total number of persons who have arrest warrant by the Albanian authorities. (Source Albania State Police)

From the data provided by the State Police of the Republic of Albania (<http://www.asp.gov.al>, accessed February 2015), on the whole territories of the Republic of Albania are required with warrant arrest by the Albanian authorities, 700 persons convicted by the judiciary authorities, 621 persons had arrest warrant for various offenses, where the highest percentage of occupied offenses of murder, trafficking, exploitation of prostitution, theft, robbery etc.

Courses are only 79 persons from a total number of 700 persons wanted for criminal offenses in drug-crimes. From the data analyzed, it turns out that 79 persons convicted and required by the Albanian authorities for criminal acts in the field of drug-crimes, 23 of them belong to the age between 18-30 years, 45 persons aged 31-45 years and 11 persons aged 46-75 years.

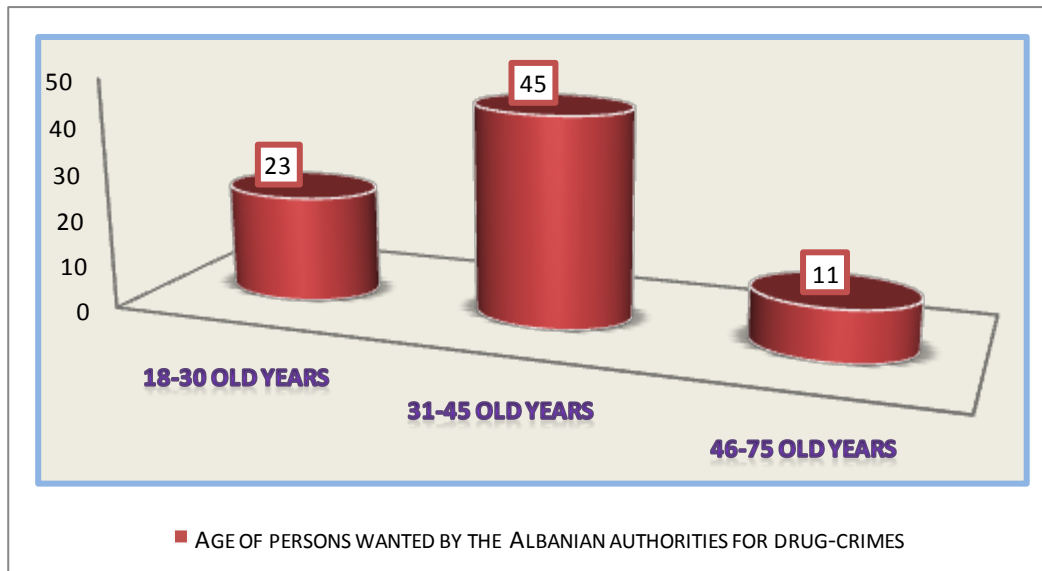


Figure 2. Age of 79 persons wanted by Albanian authorities for drug-crimes, (Source Albania State Police).

Regarding gender convicted persons, who have arrest warrant from the Albanian authorities, according to the web site of the State Police, 75 persons from the total number, are male, of those 5 people were foreign nationals and 70 are Albanian nationals, and 4 persons are female. According to data that have been researched and analyzed by total number of 79 persons convicted of criminal offenses required in drug-crimes, 15 of them were sentenced to imprisonment from 1 to 5 years, 52 people have been convicted 6-10 years imprisonment, 11 persons were sentenced to imprisonment from 11-15 years and 1 person is sentenced to imprisonment from 16-18 years.

Post-communist Albania, specifically after 1990, has made continuous efforts for change, supplement and harmonization of legislation with European Union legislation in profile of criminal law and international criminal law, including the Criminal Code, Criminal Procedure Code, Criminal Code on Juveniles, Law on Enforcement of Court Decisions and the Law on jurisdictional relations with foreign authorities in criminal matters. The legal basis to offer and seek international assistance in criminal matters is the law, number 100/2013 with some changes in the Law, No. 10 193, dated 03.12.2009, for jurisdictional relations with foreign authorities in criminal matters, which are more procedural act, since regulates some very important institutions, in international legal cooperation. This law regulates the institution of extradition, defining basic and important principles, then the administrative and judicial body, their powers, the procedure which should be

developed, the obligations and rights of individuals, the question of appeal against the decision of the Court. However, Albania except national law, has entered in the jurisdictional bilateral relationship where we can mention the following: Convention with Greece on the transfer of prisoners in 1953, the Convention with Greece for mutual implementation of decisions in 1993, the Convention on legal assistance with the Soviet Union in 1958, Convention on extradition and legal assistance with Czechoslovakia in 1938, extradition agreement with Great Britain 1927, extradition agreement with Egypt in 2004, extradition agreement with Macedonia 1998, extradition agreement with the United States of America 1938, extradition agreement with Kosovo in 2013 etc.

Albania has ratified a number of multilateral conventions on the establishment of multilateral jurisdictional relations, where most importantly is that the law on ratification of the Convention on Extradition of 1957 of the Council of Europe and the two additional protocols in 1998, then ratified the third protocol and finally in 2013, it ratified the fourth protocol of this Convention. Albania, also by the law no. 9604, dated 11.09.2006, has ratified the Convention on Police Cooperation for Southeast Europe of the year 2006 signed between the Western Balkan countries.

Legal relations between the Albanian Prosecution and international law enforcement agencies in the field of criminal law are expanded significantly, particularly in recent years. This upward trend should be seen in connection with the fact that criminal activity in general and organized crime in particular, has passed national boundaries, becoming more and more a regional and global problems. Criminality in all its forms has profoundly changed recently.

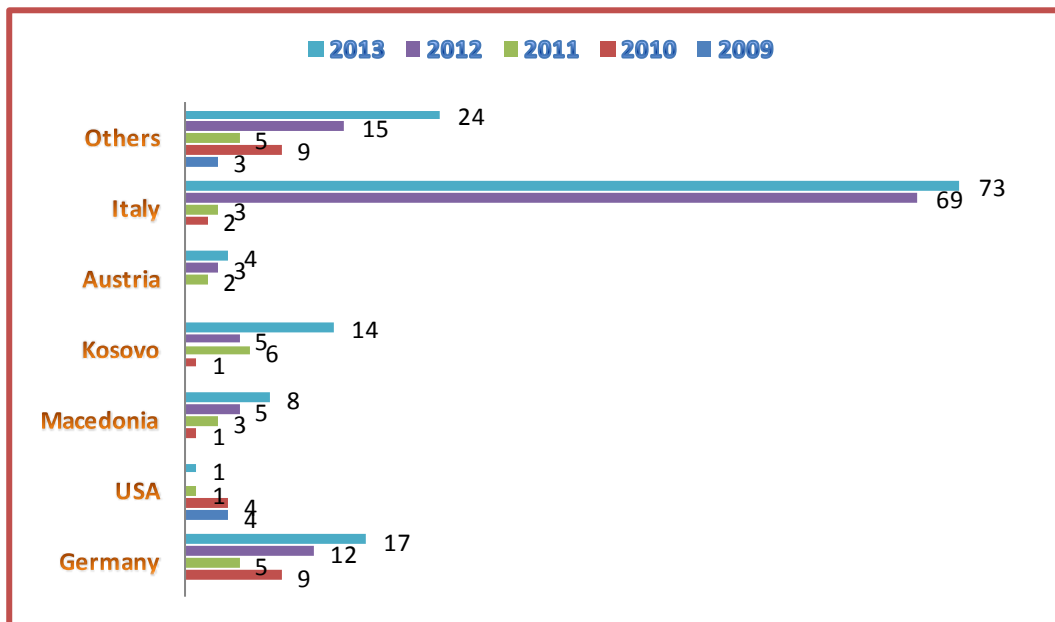


Figure 3. Number of persons extradited from Albania to other countries for the years 2009-2013

According to data provided by the annual reports of the Prosecutor General of the Republic of Albania from 2009 to 2013, shows that in this period the crust from Albania to other countries extradited different persons, some of them Albanian nationals, nationals foreign, but are arrested by the Albanian authorities. So for the period from 2009 to 2013, 308 persons were extradited.

The use of international legal assistance specifically extradition within the legal relations is only one of the ways to combat drug-crimes phenomenon, so the data presented above show that in 2013

only 141 persons were extradited from Albania to other states. Albanian authorities during 2014, continued the trend of combating crime, especially drug crimes and this was reflected in 05th February of 2015, (www.punetebrendshme.gov), where Ministry of Internal Affairs of the Republic of Albania, presented the main achievements for 2014 within the priority number 4, where these data are presented:

"..In the war against the production and trafficking of drugs in 2014, two important operations were conducted. The police operation codenamed "Lazarati", for control of the territory and disposal of narcotic plants, where over 833 flats, territories and a variety of other premises were searched. At the end of the police operation, 133,567 narcotic plants were disposed and narcotic substances and labs were seized, and police operation codenamed "Dukagjini" for control and disposal of narcotic plants in municipalities, Pult, Shosh, Shale and Temal where 313 parcels were identified and destroyed 136,468 narcotic plants. 570 cases of cultivation of narcotic plants were identified, 164 of them were discovered, 204 offenders were identified, 105 perpetrators were arrested and detained, 37 were investigated were investigated on freedom and 62 perpetrators were declared as wanted. A total of 551,414 narcotic plants were disposed. Compared to the same period of 2013, where 229 offenses cultivation of narcotic plants were recorded with 98,491 plants disposed, 77 cases were detected, with 89 authors, 52 perpetrators arrested in flagrante, 16 are being prosecuted on freedom and 21 perpetrators are wanted. There was a significant increase in terms of the quantity of drugs seized in 2014. Therefore the amount of heroin seized in 2014 is 73 kg 491.7 grams, while this amount for 2013 was 47 kg 325 gr. An increase of 55.3% of the amount of heroin seized was recorded. Thus the amount of marijuana seized in 2014, is 97,226 kg 101.9 g while the quantity of marijuana for 2013 was 20,672 kg 916.9 g. An increase of 370.3% in the quantity of seized marijuana was recorded".

1.4. Conclusions

During research and analysis of this paperwork, we have reached to the conclusions and recommendations therefore, bellow we will present:

Extradition represents one of the most important legal assistance in the framework of international legal cooperation in criminal matters.

The Albania Republic due to political, social, legal and geographical position represents an oasis for organized crime groups to develop criminal activities.

Republic of Albania has ratified the Convention on Extradition 1957 and its four protocols, also Albanian authorities jurisdictional part of several bilateral agreements and multilateral.

Republic of Albania is part of the Balkan Peninsula and is part of the Balkan route of drug trafficking, so extradition role in combating drug-crimes has already begun to give its effects.

From the data provided by the State Police Albania turns out that on the whole territories of the Republic of Albania are required with warrant arrest by the Albanian authorities, 700 persons convicted by the judiciary authorities, 621 persons had arrest warrant for various offenses, where the highest percentage of occupied offenses of murder, trafficking, exploitation of prostitution, theft, robbery etc. Courses are only 79 persons from a total number of 700 persons wanted for criminal offenses in drug-crimes. It turns out that 79 persons convicted and required by the Albanian authorities for criminal acts in the field of drug-crimes, 23 of them belong to the age between 18-30 years, 45 persons aged 31-45 years and 11 persons aged 46-75 years.

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According to data provided by the annual reports of the Prosecutor General of the Republic of Albania from 2009 to 2013, shows that in this period the crust from Albania to other countries extradited different persons, some of them Albanian nationals, nationals foreign, but are arrested by the Albanian authorities. So for the period from 2009 to 2013, 308 persons were extradited.

From Albanian authority, in 2013, 141 persons were extradited from Albania to other states, in 2012, 109 persons were extradited from Albania to other states, in 2011, 25 persons were extradited from Albania to other states, in 2010, 25 persons were extradited from Albania to other states and in 2009, 7 persons were extradited from Albania to other states.

Albanian authorities during 2014 continued the trend of combating crime, especially drug crimes.

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