JOURNAL OF INTELLECTUAL PROPERTY AND HUMAN RIGHTS

Volume: 4 Issue: 7 | july–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

Concept and Legal Nature of Extradition in Criminal Proceedings: Comparative Legal Analysis

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Annotation: This article examines the concept and legal nature of extradition as a key instrument of international cooperation in the field of criminal justice. The author analyses extradition through the lens of its regulation in both international and domestic legal systems, emphasizing its dual legal character as a bridge between international obligations and internal legal procedures. Special attention is given to a comparative legal study of the legislation of the Republic of Uzbekistan, Central Asian states, and European countries. The research relies on international treaties, national laws, and the case law of international courts. The article identifies the core challenges of extradition practices and proposes solutions for improving national regulation. The importance of safeguarding human rights in the extradition process and harmonizing domestic law with international norms is underscored.

Key words: extradition, criminal procedure, international cooperation, human rights, legal nature, comparative legal analysis, state sovereignty, international treaties, political persecution, legal assistance.

Introduction

International cooperation in the field of criminal justice in the 21st century is undergoing qualitative transformations caused by the growth of transnational crime, the intensification of migration processes and the need for a legal response to global threats. In these conditions, extradition is becoming increasingly important as a tool for ensuring the inevitability of criminal liability and strengthening international legal security.

In the context of globalization, the relevance of studying extradition from the standpoint of its compliance with international standards and the effectiveness of law enforcement is increasing. An important aspect is the respect for human rights, including the prohibition of extradition in the event of a threat of torture, inhuman treatment or political persecution. In the practice of states, there are cases of refusal of extradition on grounds related to discrimination, lack of a fair trial or threat to life.

The purpose of this study is a comprehensive analysis of the concept and legal nature of extradition, based on the results of this analysis, the formation of a holistic understanding of the concept and legal nature of extradition, as well as an assessment of the effectiveness of its legal regulation in the Republic of Uzbekistan based on international standards and comparative legal experience, in particular, through a comparative study of the legislation of Uzbekistan, the countries of Central Asia and Europe. The object is the institution of extradition in the criminal procedure system, the subject is the legal essence, grounds, procedure and limitations of the application of extradition.

The relevance of the topic is due to the need to ensure a balance between the effectiveness of criminal prosecution and guarantees of individual rights, as well as the desire of the Republic of Uzbekistan to integrate into the international legal space.

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The legal nature of extradition is dual: on the one hand, it is based on international legal norms, on the other, it is implemented within the framework of national legislation. This makes extradition a multi-level legal institution, operating at the intersection of domestic and international legal orders. Each state forms its own procedures and conditions for extradition, based on its legal traditions, international obligations and principles of criminal policy.

It should be noted that extradition is a legal mechanism by which one state hands over to another state a person accused of or convicted of a crime for prosecution or execution of a sentence. This institution is enshrined in both international treaties and national legal systems of states. Its normative design is reflected, in particular, in the European Convention on Extradition of 1957 [1], UN Convention against Transnational Organized Crime 2000 [2], as well as in the Minsk Convention on Legal Assistance of 1993, which regulates legal relations between the CIS countries [3].

As we already know, the legal nature of extradition is dual: it is implemented on the basis of international law, but its procedure and admissibility are determined by the domestic legislation of a particular state. According to the approach of M.N. Marchenko, extradition is a form of international legal assistance in criminal cases, where the most important importance is attached to the observance of sovereignty and human rights [4]. A similar approach is reflected in the practice of the European Court of Human Rights, which emphasizes that extradition is possible only if there are guarantees of a fair trial and the absence of a threat of inhuman treatment.

In Uzbekistan, the institution of extradition is regulated by the Criminal Procedure Code of the Republic of Uzbekistan, as well as by international treaties to which the state is a party. The provisions of Section 14 of the Criminal Procedure Code of the Republic of Uzbekistan regulate the procedure for international cooperation in the field of criminal proceedings, in particular, Chapter 64 of the Code of Criminal Procedure sets out the basic provisions on the procedure for interaction between courts, prosecutors, investigators and inquiry bodies with the competent authorities of foreign states; and Chapter 65 of the Code of Criminal Procedure provides for the procedure for extraditing a person for criminal prosecution or execution of a sentence; and Chapter 66 of the Code of Criminal Procedure regulates the conditions for the recognition and enforcement of a decision of a foreign court, the acceptance and transfer to a foreign state of a person sentenced to imprisonment for further serving of the sentence, as well as a person to whom a compulsory medical measure has been applied for further compulsory treatment.

Despite the existence of a regulatory framework, significant difficulties arise in law enforcement practice due to competition between jurisdictions, the absence of agreements on mutual extradition, and differences in the definition of political crimes. Moreover, there is no uniform approach to the interpretation of a number of international obligations, which leads to fragmentation and inconsistency in extradition mechanisms.

In this regard, comparative legal analysis is particularly relevant: it allows us to identify universal principles and assess the degree of legal compatibility of national systems. The experience of Central Asian and European countries demonstrates differences both in procedural aspects and in approaches to humanitarian grounds for refusing extradition. For example, Germany, relying on the provisions of Article 16 of the Basic Law of the Federal Republic of Germany, categorically prohibits the extradition of citizens without an international agreement, while some post-Soviet states allow extradition based on the principle of reciprocity [5].

The efforts of the international community to establish justice and inevitability of criminal liability in the context of globalization and transnational crime are reflected in the legal institution of extradition. It is an integral part of criminal proceedings, enabling the state to prosecute defendants who are hiding outside national jurisdiction.

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The institution of extradition has a long history, dating back to the ancient era. Already in the treaties between Mesopotamia and Egypt, obligations to return fugitive criminals were envisaged. In the Middle Ages, extradition was carried out mainly by dynastic agreements. Modern international extradition law began to take shape in the 19th century, when the first treaties with standard conditions for the extradition of persons accused of criminal offenses were concluded. [6, P. 315].

According to the European Convention on Extradition of 1957, extradition is the transfer of a person prosecuted for a crime to another state for the purpose of prosecution or the execution of a sentence (Article 1) [1]. Similarly, the 2000 UN Convention against Transnational Organized Crime (Article 16) enshrines extradition as a form of international cooperation [2].

The doctrine highlights different approaches to defining the essence of extradition. Thus, V.M. Shafir points out that extradition is "an international procedure by which the transfer of an accused or convicted person from one state to another is carried out" [7, P. 312]. A.N. Vasiliev emphasizes its character as "an institution of legal assistance in criminal cases, based on the principles of reciprocity and legality" [8, P. 198]. Thus, extradition is not only a technical act of handing over a person, but also the implementation of the principle of the inevitability of responsibility in the context of international cooperation.

Historically, the institution of extradition was formed as a manifestation of cooperation between states based on reciprocity. With the development of international law, it acquired a contractual and institutional form: from the first bilateral agreements to modern multilateral conventions, such as the European Convention on Extradition of 1957 (ETS No. 024), The UN Convention against Transnational Organized Crime of 2000, as well as the CIS Minsk Convention of 1993.

The issue of extradition is inextricably linked with the protection of human rights. As stated in Article 3 of the European Convention on Human Rights, no person may be extradited if he or she would be at risk of cruel or degrading treatment in the destination country. These principles have been consistently applied by the European Court of Human Rights, in particular in cases Soering v. United Kingdom (1989), Chahal v. United Kingdom (1996), Mamatkulov and Askarov v. Turkey (2005) [9].

Material and methods

The methodological basis of the study is a complex of scientific methods of cognition and research: structural-systemic, comparative-legal, statistical, formal-legal and historical-legal methods and other methods that make it possible to identify both general patterns and specific features of legal regulation. Having studied the works and opinions of researchers in this field, national legislation and international experience, gaps in legislation were identified through analysis and ways to solve them were proposed. The scientific novelty lies in the systematic assessment of the current legislation of Uzbekistan from the standpoint of its compliance with international obligations and trends in the development of extradition cooperation, as well as the proposal of reasoned recommendations for its improvement.

Research result

For a full disclosure of the institution of extradition, we further analyze in detail the concept of extradition and its international legal basis. Extradition, or the extradition of a person to another state, is a legal mechanism established in international law and national legal systems aimed at ensuring the criminal liability of persons hiding from investigation or punishment. In a broad sense, extradition covers actions related to the transfer of an accused or convicted person from one State to the jurisdiction of another, with priority given to compliance with procedural guarantees and the principles of international cooperation.

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The concept of extradition is not uniformly defined, but in international practice it is generally understood as the official transfer of a person by one state to another on the basis of an international treaty or the principle of reciprocity if there is no treaty [10, P. 410]. According to the doctrine of international law, extradition is one of the forms of international legal assistance in criminal cases and implements the principles of the inevitability of punishment and mutual trust between states [11]. The international legal framework for extradition includes both universal and regional international treaties. Among the universal acts, of particular importance are:

- The European Convention on Extradition of 13 December 1957, signed within the Council of Europe, is one of the most influential international documents regulating the procedure for extradition between European countries [1];
- The United Nations Convention against Transnational Organized Crime (Palermo, 2000), establishing general principles for extradition for crimes involving international criminal groups [2];
- Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of January 22, 1993 - a regional agreement for the CIS countries [3].

Based on the above, we can conclude that at the international level, extradition is regulated by such key acts as the European Convention on Extradition (1957) — the main document in the European region defining the grounds and procedures; The United Nations Convention against Transnational Organized Crime (2000) is a universal instrument covering the fight against organized crime; The 1993 Minsk Convention, which operates within the CIS, regulates mutual legal assistance, including extradition.

Many of these instruments provide grounds for refusing extradition, including:

- the political nature of the crime;
- the existence of a risk of torture or inhuman treatment;
- the absence of the principle of double criminality (i.e. when the act is not considered a crime in both states);
- the request violates human rights standards.

The protection of the rights of the requested person is of particular importance in modern international standards. For example, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) directly prohibits extradition if the person may be at risk of inhuman treatment or torture in the requesting state. Similar practice is contained in decisions of the European Court of Human Rights, for example in the cases of Soering v. the United Kingdom (1989) and Chahal v. the United Kingdom (1996), where the emphasis is placed on the inadmissibility of extradition when there is a risk of violation of fundamental rights [8].

The legal nature of extradition in modern criminal procedural science is considered as a manifestation of the interaction of international public and national criminal procedural law. On the one hand, extradition represents the implementation of international obligations of the state based on treaties or the principle of reciprocity, on the other hand, it is carried out within the framework of national criminal procedural procedures, in compliance with sovereignty, constitutional principles and human rights. [12].

The most characteristic feature of the legal nature of extradition is its dual nature. As M.N. Marchenko emphasizes, extradition is a “hybrid institution that combines an international legal obligation and a domestic law enforcement mechanism” [4]. In this case, the content and limits of execution of the

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extradition request are determined by domestic law, even in the presence of an international agreement.

The literature identifies several approaches to defining extradition:

- The international treaty approach, according to which extradition is carried out only in the presence of an international agreement between states;
- The reciprocity approach, when the absence of a treaty is compensated by an obligation based on the principle of reciprocity;
- A unilateral sovereign approach, allowing decisions on extradition to be made solely on the basis of national legislation [13].

The legal nature of extradition is also manifested in its functional role – as a form of international legal assistance in criminal matters, the purpose of which is to ensure the accountability of persons who have escaped justice. According to A.Kh. Abdullaev, extradition "is not an independent goal, but serves as a means of implementing international criminal justice" [14].

An important characteristic of extradition is its classification. In scientific literature, the following types can be distinguished:

1. By sources of legal regulation:

- ✓ contractual (based on an international agreement);
- ✓ non-contractual (based on the principle of reciprocity or national legislation).

2. By the obligatory nature of execution:

- ✓ mandatory extradition (provided for by international agreements);
- ✓ optional (the state makes a decision based on political expediency).

3. By the nature of the legal status of the person:

- ✓ extradition of the accused (to initiate a criminal case or continue the investigation);
- ✓ extradition of convicted persons (to execute a sentence).

For example, the UN Convention against Corruption (2003) separately regulates extradition for sentences already passed (Article 44) [15].

4. By subject of the appeal:

- ✓ interstate extradition (classical form);
- ✓ extradition through international organizations.

The legal nature of extradition requires mandatory compliance with fundamental principles:

- the principle of double criminality - the act must be recognized as a crime in both jurisdictions;
- the principle of specialty - a person can be held accountable only for the crime for which he was extradited;
- the principle of inadmissibility of political extradition - extradition is impossible if the crime is of a political nature;
- the principle of inadmissibility of extradition if there is a threat of human rights violation, including torture and the death penalty.

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Thus, in the case of Soering v. the United Kingdom, the ECtHR indicated that extradition may be found to violate Article 3 of the Convention if the person is at risk of inhuman conditions of detention or trial in the country of destination [8].

Taking into account the above, it can be argued that extradition as a legal institution is not just a technical procedure, but a complex legal mechanism that includes an international legal obligation and national legal implementation, strictly limited by human rights norms and legal standards of fair justice.

A comparative legal analysis of the institution of extradition allows us to identify significant differences and common principles operating in various legal systems. It serves as an important tool for assessing the effectiveness of national legislation and its compliance with international standards. This section will examine the legal regulation of extradition in the Republic of Uzbekistan, as well as in the legal systems of Kazakhstan, Kyrgyzstan, Germany and France.

So, let's look at the example of the following countries:

Uzbekistan

In the Republic of Uzbekistan, extradition is regulated by:

- Chapter 65 of the Criminal Procedure Code of the Republic of Uzbekistan (CPC);
- The Constitution of the Republic of Uzbekistan (Article 21 - protection of individual rights and freedoms);
- international treaties: the CIS Minsk Convention, the UN Convention, as well as bilateral agreements (for example, with the Russian Federation, China, UAE).

The Criminal Procedure Code of the Republic of Uzbekistan establishes the procedure for requesting and executing extradition, the competence of the Prosecutor General's Office, and the grounds for refusal (for example, the political nature of the crime, the threat of torture, or the absence of double criminality). The law prohibits the extradition of Uzbek citizens to foreign countries, which is consistent with international practice [16].

However, the practice of applying the norms remains fragmented. The doctrine emphasizes the need to codify extradition grounds, unify procedures and enhance the role of judicial review [17, P. 88].

Kazakhstan and Kyrgyzstan

Kazakhstan regulates extradition in Chapter 60 of the Criminal Procedure Code of the Republic of Kazakhstan, as well as through bilateral and multilateral agreements. The Prosecutor General's Office reviews extradition requests, and decisions can be appealed to the courts [18]. The law prohibits extradition if there is a risk of torture or death penalty. Citizens of Kazakhstan are not extradited to foreign countries, which is enshrined in Article 11 of the Constitution of the Republic of Kazakhstan.

In the Kyrgyz Republic, extradition is regulated by the Criminal Procedure Code (Chapter 60), the Law on International Treaties and international conventions [19]. The procedure is similar to the Uzbek model: the petition is reviewed by the Prosecutor General’s Office, and the final decision is made by the President.

Germany

In Germany, the institution of extradition is based on:

- Basic Law of the Federal Republic of Germany (Grundgesetz), Art. 16;
- Law on International Legal Assistance in Criminal Matters (IRG);

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- agreements with other countries and the EU, including the European Convention on Extradition [20].

German law strictly prohibits the extradition of German citizens without an international agreement (Article 16 GG). Even if there is an agreement, refusal is permitted on humanitarian grounds (e.g. serious illness, risk of torture or political persecution). The Federal Public Prosecutor's Office and the state courts play a key role, as they are obliged to ensure respect for human rights.

France

In France, extradition is regulated by:

- The Code of Criminal Procedure (Code de procédure pénale);
- International agreements;
- Principles arising from the practice of the Council of State (Conseil d'État) and the ECHR [21].

France allows extradition under both multilateral and bilateral agreements, but the Constitution prohibits the extradition of citizens (Article 69-3). The law sets out a wide range of grounds for refusal, including:

- the risk of the death penalty;
- political motivation of the prosecution;
- lack of reciprocity.

In addition, a significant portion of decisions in the area of extradition are subject to judicial review, including appeal to the Court of Cassation.

For a visual comparison, a comparative table with key differences is provided below:

№	Criterion	Uzbekistan	Kazakhstan	Germany	France
1	**Extradition of citizens**	No	No	Only by agreement	No
2	**Judicial control**	Partially	Yes	Required	Required
3	**The principle of "double responsibility"**	Yes	Yes	Yes	Yes
4	**Refusal on humanitarian grounds**	Possible	Yes	Required	Yes
5	**International standards**	Partially applicable	Partially applicable	Direct Application	Direct Application

Thus, a comparative analysis shows that the legal systems of European countries provide more developed mechanisms of judicial review, are more focused on the protection of individual rights and more consistently apply international standards. At the same time, Central Asian countries, including Uzbekistan, are moving towards harmonizing legislation, but retaining elements of administrative discretion and political expediency. This requires improving the regulatory framework, in particular introducing clear procedural guarantees and expanding judicial oversight during extradition.

Despite the existence of a developed international regulatory framework and the existence of national extradition procedures in most states, the practice of applying this institution is accompanied by a number of significant problems. They concern both normative gaps and difficulties in implementing international standards, particularly in legal orders with transitional or unstable judicial systems.

We also consider it appropriate to cite several regulatory and procedural shortcomings.

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The legislation of a number of countries, including the Republic of Uzbekistan and other Central Asian countries, lacks a codified list of grounds for refusing extradition, clearly defined timeframes for considering extradition requests, and a uniform standard of procedural fairness [22].

This leads to differences in the practice of executing requests and to delays in issuance.

In addition, the mechanisms of interaction between the judicial system and the prosecutor's office are not always clearly established. For example, in Uzbekistan, the final decision on extradition is made by the Prosecutor General's Office, and judicial review is limited (checking the legality of detention, but not the decision on extradition itself).

This design reduces the effectiveness of the protection of the rights of a person subject to extradition and is contrary to the principle of checks and balances.

A significant problem remains the implementation of human rights guarantees during extradition. Despite the norms proclaimed in the constitutions and ratified international treaties, in practice there are cases of:

- refusal to provide information to the defense;
- refusal to take into account humanitarian grounds (health status, family circumstances);
- pressure on a person under arrest [23].

A high-profile example is the case of Mamatkulov and Askarov v. Turkey, in which the ECHR found that the applicants' rights had been violated in connection with their extradition to Uzbekistan, despite the existence of urgent measures from the UN Committee [24]. This case highlights the need to strengthen the role of international obligations and to introduce mechanisms for prior control of conditions in the destination State.

The preservation of political grounds for extradition in a number of legal systems (including the CIS) also raises concerns. Often, practice demonstrates arbitrary interpretation of “threat to national security” or “state secrets” as grounds for refusing extradition or, conversely, for allowing it [25].

Extradition can be used as a tool of political pressure or persecution, especially in the case of persons accused of politically sensitive crimes (e.g. participation in opposition movements, criticism of the government). Despite the prohibition of political extradition in the European Convention and other documents, cases of abuse remain.

An example is the practice of extraditing former civil servants or political figures at the request of states where there are no guarantees of a fair trial. The ECHR has repeatedly emphasized in its decisions the need to refuse extradition when there is a risk that the charges are politically motivated [26].

Analysis of research results

Extradition as an institution of international criminal procedure is a complex and multifaceted mechanism. In international practice, extradition is regulated by numerous conventions. In particular, in Germany, extradition is regulated by the Law on International Legal Assistance in Criminal Matters. The United States operates on the basis of both international treaties and domestic law. CIS countries such as Kazakhstan and Russia use a model similar to Uzbekistan, with an emphasis on legal assistance and mutual recognition of decisions.

Therefore, extradition is a complex and multifaceted legal mechanism, located at the intersection of international and national law. It simultaneously implements the goals of justice, international solidarity and protection of individual rights, and also requires strict compliance with the norms of both international treaties and domestic legislation.

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The legal nature of extradition combines the features of an international and procedural institution. Extradition is a complex institution that operates at the intersection of national criminal proceedings. Some researchers view it as an international obligation arising from the principles of cooperation, while others focus on its procedural component related to criminal prosecution and compliance with procedural guarantees. Extradition is carried out both through the executive branch (Ministry of Justice, Prosecutor General's Office) and through judicial procedures.

In practice, the main problems in Uzbekistan are: long periods of consideration of extradition requests, legal uncertainty in a number of categories of cases and the lack of uniform judicial practice. There are also difficulties in fulfilling international obligations in the absence of bilateral treaties.

Proposals for improving legislation and practice

In order to overcome the above problems, we propose the following measures:

1. *Regulatory measures:*

- Approve in the Criminal Procedure Code of Uzbekistan and similar codes of the CIS countries an exhaustive list of grounds for refusing extradition;
- Include provisions on mandatory judicial review of the decision to extradite;
- Provide a mechanism for mandatory consideration of decisions and recommendations of international bodies (ECHR, CCPR, UN COMPACT).

2. Procedural improvements:

- Standardize the timeframes for reviewing requests;
- Introduce mandatory legal assistance and translation of documents for the requested person;
- Ensure the participation of an independent lawyer at all stages of extradition proceedings.

3. Judicial practice and law enforcement:

- Develop judicial practice on extradition at the level of the highest judicial authorities;
- Ensure the publication of decisions on issues of refusal or satisfaction of requests;
- Introduce mandatory training for prosecutors and judges on the application of international standards.

4. International cooperation:

- Conclude bilateral agreements with provisions on the protection of human rights during extradition;
- Include in agreements obligations to provide information on the situation in the penitentiary system of the destination state;
- Participate in the unification of international norms within the CIS and the UN.

Thus, improving the institution of extradition requires a comprehensive approach, including legal, procedural and institutional modernization. Harmonization of national legislation with international standards, strengthening judicial control and expanding mechanisms for the protection of individual rights are key conditions for a fair and lawful extradition policy.

In particular, for our country we offer separate proposals for improving national legislation:

1. Amend the Criminal Procedure Code of the Republic of Uzbekistan, clearly delineating the powers of judicial and executive bodies.

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2. Adopt a separate normative act regulating the extradition procedure.

3. Expand the international treaty base, especially with states with active migration ties.

4. Introduce mandatory judicial control at all stages of the extradition process.

Conclusion

The modern development of international relations, accompanied by the growth of transnational crime, requires states to have effective legal mechanisms for interaction in criminal justice. One of these mechanisms is extradition, an institution that ensures the extradition of persons accused or convicted of committing crimes from one state to another for the purpose of bringing them to criminal responsibility or enforcing a sentence.

Thus, extradition is not only a legal institution of interstate interaction, but also an indicator of the degree of respect for international obligations, human rights and principles of justice. It occupies a central place in the system of international criminal cooperation and requires a balanced approach between the interests of justice and legal guarantees of the individual.

In conclusion, we would like to note once again that the conducted research is aimed at forming scientifically based proposals for improving extradition policy and practice in the context of Uzbekistan's integration into the global legal space.

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