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DOI https://doi.org/10.30525/978-9934-26-677-5-27

EXTRADITION AS AN INTERNATIONAL LEGAL CATEGORY: TERMINOLOGICAL AND CONCEPTUAL APPROACHES

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The modern world is inconceivable 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 state borders, the free movement of capital, and the possibility of unhindered and virtually uncontrolled movement of people" [6, p. 139], consequently leading to a rise in criminal activity. As a vital institution of international criminal law and a key vector of international cooperation in crime prevention, the institution of extradition plays a crucial role in the administration of justice and the punishment of offenders.

Significant contributions to the development of the conceptual foundations of extradition have been made by prominent domestic and foreign scholars, including Yu. Alenin, S. Andreichenko, M. Bassiouni, N. Boister, V. Butkevych, O. Vinogradova, O. Voloshchuk, G. Grift, G. Gilbert, N. Zelinska, V. Kolesnyk, I. Lukashuk, V. Panova, M. Pashkovskyi, V. Popko, G. Rony, M. Ford, M. Khavronyuk, and others.

The purpose of this study is to analyze modern scholarly and conceptual approaches to understanding the concept of "extradition."

In legal science, the issue of defining terms that meet the requirements of precision, clarity, conciseness, consistency, and international harmonization is becoming increasingly important. This is particularly relevant to the concept of "extradition," the substantive content of which is influenced by both international acts and national regulatory frameworks, reflecting diverse linguistic systems and legal traditions. At the same time, a content analysis of scholarly literature reveals that there is no unified understanding of extradition and its legal nature within legal doctrine.

The term “extradition” derives from the Latin *extraditio*, which literally translates as “delivery from.” This term was first legally established in France and referred to the procedure for the forced return of a fugitive subject to the sovereign. Today, the content and meaning of this term regarding extradition have evolved. Legal doctrine has seen the emergence of several viewpoints concerning the legal nature of extradition, oscillating between two opposing positions: one based on the distinction between the concepts of “extradition” and “surrender/handing over” (“vydacha” in Ukrainian), and another that identifies extradition with surrender.

Scholars who distinguish between “extradition” and “surrender” proceed from the premise that these are not identical concepts and that extradition should not be reduced merely to the handing over of a person; it is argued that, while originating from the institution of surrender, the institution of extradition has undergone a significant transformation. The norms pertaining to extradition clearly do not fit within the boundaries afforded to the institution of surrender.

The view that the concept of “extradition” is synonymous with “surrender” has gained wide currency. An analysis of specialized literature confirms that this position is generally accepted. In particular, according to A. Dzhyhyr, “at the doctrinal level, the synonymy of the terms 'extradition' and 'surrender' is indisputable, and accordingly, their use in scientific literature is equally permissible.”

In modern legal doctrine, many scholars interpret the concept of “extradition” from this very perspective. 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 administration of justice or a convicted person for the execution of a sentence, provided by the state in whose territory the requested person is located, at the request of the state in whose territory, by whose citizen, or against whose citizens' rights and freedoms or its own interests the crime was committed” [4, p. 314].

A. Malanyuk uses the term “surrender” (“vydacha” in Ukrainian), defining it as the “activity of competent authorities based on generally recognized principles of international law, norms of international treaties, and domestic legislation, during which a state – in the event that it has suffered from a crime, or the crime was committed on its territory or by its citizen – requests and receives an accused, defendant, or convicted person from the state where they are located, for the purpose of criminal prosecution or execution of a sentence, or otherwise considers a submitted motion from a foreign state and transfers the requested person” [3, p. 44].

In international law doctrine, this approach is explained by the fact that the institution of extradition originated from the institution of surrender and has not achieved autonomous recognition. Consequently, the further improvement of the regulatory framework for the institution of extradition, as well as the

resolution of many practical issues in extradition activity, is largely complicated by an adherence to outdated views and concepts.

Based on the analysis of the presented definitions, a conclusion can be drawn regarding the similarity, rather than the identity, of extradition and surrender. The institution of extradition represents an independent, complex, and poly-systemic institution of international criminal law, characterized by its own tasks, goals, and functions, which are neither absorbed nor duplicated by the institution of surrender. The norms pertaining to the institution of extradition clearly do not fit within the boundaries 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" ("peredacha" in Ukrainian), which denotes a somewhat different form of interstate cooperation in law enforcement that differs in its legal nature.

A classic definition, accepted as generally recognized and cited by scholars in their research, was formulated in the U.S. Supreme Court decision in Terlinden v. Ames, which established that "extradition is the surrender by one nation to another of an individual accused or convicted of an offense committed within the territorial jurisdiction of the demanding party, which, being competent to try and punish him, demands his surrender" [cited in 4, 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 mutual legal assistance by states, consisting in the transfer of a person to the state where the 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 most from the criminal act, and whose competent authorities seek this person for criminal prosecution or execution of a sentence" [2, p. 275].

The position of O. Voloshchuk and V. Kolesnyk appears very close to the one mentioned above; they understand extradition as "a process comprising a series of sequential actions by states regarding the transfer of a person located on its territory to another authorized subject of international law, based on international agreements and domestic national legislation, in compliance with generally recognized principles of international law, for the purpose of criminal prosecution or the execution of a sentence handed down by a state court" [1, p. 9].

V. Popko, analyzing the etymology of the terms "surrender" ("vydacha" in Ukrainian) and "extradition," concludes that they have significant differences. Specifically, "extradition differs from surrender primarily in its content, as it includes the stage of initiating the proposal for the transfer (surrender) of a person; the decision-making process on this issue by the competent authorities of two states; the stage of appealing the decision; the actual process of transfer (surrender) of the person; the legalization of the sentence by the court of the state that received the person, etc." [5, p. 21].

Based on the analyzed approaches to understanding this phenomenon of legal reality, it should first be noted that labeling the same institution as both "surrender" (vydacha) and "extradition" introduces discrepancies in the understanding, interpretation, and application of extradition within international law doctrine and law enforcement practice. In this regard, it is appropriate to use a term that most closely aligns with the procedures for the surrender/transfer/delivery of persons at the request of one state to another state where the person was in hiding, for the purpose of subsequent criminal prosecution or to ensure the execution of a sentence; the term "extradition" appears to be the most comprehensive for this purpose.

An analysis of doctrinal and dogmatic approaches to defining the concept of "extradition" in the context of international law allows for the conclusion that extradition can be viewed 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 they are located to a state that has grounds for exercising its jurisdiction, for the purpose of subsequent criminal prosecution or to ensure the execution of a sentence.

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