REVISTA RELAÇÕES INTERNACIONAIS DO MUNDO ATUAL

unicuritiba

Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

EXTRADITION: THE EUROPEAN COURT OF HUMAN RIGHTS AND THE UKRAINIAN EXPERIENCE

TATIANA H. FOMINA
Department of Criminal Procedure and Organization of Pre-Trial Investigation
Kharkiv National University of Internal Affairs
61000, 27 Lev Landau Ave., Kharkiv, Ukraine

VOLODYMYR I. GALAGAN
Department of Criminal Law and Law of Criminal Procedure
National University of "Kyiv-Mohyla Academy"
04655, 2 Hryhoriy Skovoroda Str., Kyiv, Ukraine

ZHANNA V. UDOVENKO
Department of Criminal Law and Law of Criminal Procedure
National University of "Kyiv-Mohyla Academy"
04655, 2 Hryhoriy Skovoroda Str., Kyiv, Ukraine

SERHII YE. ABLAMSKYI
Department of Criminal Procedure and Organization of Pre-Trial Investigation
Kharkiv National University of Internal Affairs
61000, 27 Lev Landau Ave., Kharkiv, Ukraine

YANA YU. KONIUSHENKO
Department of Criminal Process
National Academy of Internal Affairs
02000, 1 Solomianska Sq., Kyiv, Ukraine

ABSTRACT

This article deals with the problematic aspects of sending back a person guilty of a crime outside the territory of Ukraine to the country where the crime was committed in accordance with the European Court of Human Rights (hereinafter – ECtHR) principles. The research was carried out within the framework of the domestic law of Ukraine and the court rulings of the ECtHR. The article states that the consideration of issues of detention outside the territory of Ukraine has a complex nature, being guided by the provisions of the national legislation of Ukraine and the European Court of Human Rights. The article determines the legal basis for the extradition of persons who have committed a crime outside the territory of Ukraine. It is emphasized that in this case the generally accepted norms and principles of international law conforming with national law of each State Party to the ECHR that has ratified relevant international treaty, are important. The specific features of the normative regulation of detention of a person who has committed a criminal offense outside the territory of Ukraine enshrined in the current criminal legislation, are analyzed. It is emphasized that during the law enforcement practice the problem is a clear definition of the grounds for arrest of a person wanted by the authority of another state. The problems related to the exercise of the suspect's rights, such as the right to protection,

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

were analyzed apart. The study results allowed to develop ways to amend the Criminal Procedure Code of Ukraine in order to improve the extradition procedure.

Keywords: extradition, criminal law, arrest, European Court of Human Rights.

1 INTRODUCTION

Extradition in the context of the commission of a crime represents one of the main and most challenging to implement types of international cooperation in the field of criminal proceedings since it involves both extradition and measures of its ensuring. The national interests of each state encompass the prevention of crimes within their territories, which determines the significance of extradition regulation in the international cooperation (Robinson & Moody, 2019).

As a rule, the right to liberty and security is essential in any democratic country, which is enshrined in the Article 5 of the European Convention on Human Rights (hereinafter – the Convention) (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). This article is a key one in this research because it corelates with the presumption of innocence as the basic principle of modern criminal law. Accordingly, a suspect must be treated well, taking into account the presumption of innocence principle. On the contrary, if this principle was not adhered to, a person, who was unreasonably arrested for the damage caused, may be awarded financial compensation (Stanić & Andonović, 2020).

Since the purpose of international human rights law is to maintain the standards of protection and safety of a person, it prohibits any kind of arrest or detention of a person suspected of having committed a crime. International human rights law also stipulates that such an aspect should be subject to question and authorization in its entirety. Even though the arrest is an act that relies on legal grounds stipulated in criminal law, it should be carried out in a manner that respects the fundamental right of a person suspected of a crime, including the treatment of such a person during being in custody and awaiting a hearing (Nguindip & Ablamskyi, 2020). In this regard, the legal phenomenon of extradition is multi-faceted because it functions as an indispensable element in the international

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

collaboration between Ukraine and other countries. In addition, it is a crucial tool for complying with international legal obligations.

The purpose of this research is to establish and improve the gaps in legislation on the arrest of person suspected of having committed a crime beyond Ukrainian borders in accordance with the standards set forth by the ECtHR. The research adopted the domestic legislation and the ECtHR case law as a theoretical framework. The authors of this article applied the above methods in complex, ensuring a rigorous and straightforward analysis. The research adopted an interdisciplinary approach, which contained components of the basic norms of the criminal procedure legislation. The analysis was conducted using a set of general and special methods.

A range of methods of scientific knowledge was applied during the research. The comparative legal method weas used to determine the specific features of the Ukrainian national legislation on extradition and to compare it with international legal norms. The analysis of legal documents allowed to create recommendations for improving the national legislation of Ukraine on the departmental control over the judicial activities. The bibliographic method was used to collect and classify relevant scholarly papers, which became a theoretical basis of the research. During the research, the data obtained from legal documents, the ECtHR decisions, judgments of national courts on the discussed issue, and the police officers' experience were analyzed. Since the law regulating the issue of protection of the rights of a suspect is described and interpreted by the ECtHR, the authors of this article take it as a standard in this article. The ECtHR ensured that a person to be extradited must exercise his/her rights in the member countries of the ECtHR.

The subject matter of the study is the Ukrainian domestic legislation on extradition. At present, the ECtHR standard contradicts the standard that function in Ukraine. Resorting to extradition is difficult and time-consuming as it may have an impact on the relationship between the countries involved. One of the objectives of the article is to analyze regulatory legal documents and find the answer to the following question: Can Ukraine compromise its internal security but respect the provisions of the bilateral agreements it is a party to? The authors argue and substantiate that the current legislation on the regulation of the arrest of a suspect in a crime committed outside Ukraine is a matter of a rational platform for rethinking when the state security and sovereignty is under

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

threat. Being a country moving towards European integration, Ukraine needs the unification of legislation on criminal justice. However, due to the fact that this issue concerns state security, it should be considered from all sides.

2 THE LEGAL FOUNDATION OF THE EXTRADITION OF A SUSPECT

Legal documents issued by the United Nations (hereinafter – the UN) are basic legal norms for a democratic country. The UN focuses on preserving peace and security through negotiations or with the help of peacekeeping contingents. Moreover, the organization distributes humanitarian support and encourage stable development throughout the world (Polishchuk et al., 2019). However, it is necessary to highlight that the protection of human rights is the most important function of the UN, based on the Universal Declaration of Human Rights, which was adopted in 1948. The UN also guarantees the compliance with the international law. Thus, according to the Preamble to the UN Charter, the objective of the UN is “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained” (Robinson & Moody, 2019).

The extradition of suspects is regulated by the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters of 1993 (1993). This Convention was ratified by the Law of Ukraine of October 10, 1994, which came into force in Ukraine on April 14, 1995. The Model Treaty on Extradition, which was approved by the United Nations on December 14, 1990 (United Nations, 1990), is another essential document regulating the extradition procedure. The 1951 Refugee Convention and its 1967 Protocol, ratified by Ukraine in 2002 (Law of Ukraine, 2002) also regulates the extradition of suspects, with a particular attention to the extradition of refugees.

Since the establishment of its independence, Ukraine has signed various international agreements aimed to regulate the international collaboration in the field of criminal justice (Krupskyi et al., 2019). This cooperation also encompasses the issue of extradition, where special attention is paid to the utmost importance of consideration of

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

the aspect of extradition. However, the following question arises: Can Ukraine compromise its internal security but respect the provisions of the bilateral agreements?

Thus, there is a debate over international agreements signed between post-soviet countries that are effective in Ukraine. Even though there was no precedent of extradition among these countries (for example, it is necessary to keep in mind Serbia as the legal successor in the context of the agreement with Yugoslavia), extradition cases have an extensive settlement system, and each case is very individual in this matter (Levchenko & Britchenko, 2021). Therefore, each stage of consideration of issues of extradition requires a careful and reasoned selection of tactical and strategic tasks. **Gaps in the legislation regarding international agreements of the former USSR, which are effective in Ukraine, also necessitate amendments to the Code of Criminal Procedure.**

The above situation is particularly complicated when there is a need of extradition of a suspect to a country that does not have a signed agreement with Ukraine. If such a situation occurs, the case law of the ECtHR **prevails. For example, the Para. 87 of the judgment in the case** Öcalan **v. Turkey, the** ECtHR **held that in accordance with the extradition procedure established between the countries, taking into account that only one of them ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, the procedure determined by the extradition agreement is regarded as the key factor when determining whether the detention is legitimate.**

It is worth highlighting that the extradition of a refugee does not mean that the arrest is illegal. Therefore, there is no foundation of the complaint under the Article 5 of the European Convention on Human Rights (Öcalan v. Turkey, 2005). Hence, it is possible to state that the arrest of a person is legitimate even if a person was detained in Ukraine, being a citizen of a country that is not a member of the Council of Europe.

Moreover, the ECtHR decisions concerning the violations of the Art. 3, 5, and 6 of the **European Convention on Human Rights** committed by Ukraine during trials of the extradition cases by national courts were considered. For example, the decisions in the cases of Novik v. Ukraine (2008), Soldatenko v. Ukraine (2008), Kreydich v. Ukraine

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

(2008), Khomullo v. Ukraine (2014). Hence, the ECtHR decisions shall be a basis for the law enforcement agencies.

Therefore, the legal sources of extradition include commonly recognized international legal principles and standards, agreements, the Constitution of Ukraine, the Criminal Procedural Code of Ukraine (hereinafter – CPC **of Ukraine**)**, the Criminal Code of Ukraine,** ECtHR **decisions. However, it is worth mentioning that the extradition procedure is organized in accordance with two-way agreements taking into consideration the legislation of the two countries.**

3 DETENTION OF A SUSPECT: EXTRATERRITORIAL INTERNATIONAL JURISDICTION OF UKRAINE

The arrest is regarded as a stage prior to extradition within the collaboration between countries in counteracting crimes and is conducted with the aim to facilitate sending an extradition request through diplomatic channels, which can take much time and prevent a wanted person from avoiding the justice (Lytvyn et al., 2021).

The international collaboration in the criminal proceedings against offenders gives an impulse for updating the law enforcement system, irrespective of possible contradictions (Cherniavskyi et al., 2019). By carrying out extradition, the state demonstrates the goodwill and confirms its compliance with international legislation on the protection of human rights and common human values from illegitimate actions. Accordingly, the extradition of suspects in regular crimes is conducted (Epihin et al., 2020).

The provisions of the Article 582 of the CPC **of Ukraine** determine the specifics of the detention of a person, who has committed a criminal offense outside Ukraine. It should be noted that such a detention is carried out on the territory of Ukraine, therefore, we should take into account operation principle of the CPC in the space. According to this principle, criminal proceedings on the territory of Ukraine are carried out on the grounds and in the manner prescribed by the CPC, regardless of the place of the criminal offenses commission. Besides, Part 1 of the Article 582 of the CPC **of Ukraine** states that the

REVISTA RELAÇÕES INTERNACIONAIS DO MUNDO ATUAL
unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

detention of a person on the territory of Ukraine wanted by a foreign state in connection with the commission of a criminal offense is carried out by an authorized official. Considering the above mentioned, it can be argued that in the case of the commission of a criminal offense outside of our state, the procedure for his detention on the territory of Ukraine is regulated by the criminal procedural legislation of Ukraine.

In accordance with Part 7 of the Article 582 of the CPC **of Ukraine**, the procedure for the detention of such persons and consideration of complaints about their detention is carried out in accordance with the Articles 206, 208 of the CPC **of Ukraine**, taking into account the specifics established by the Section IX of the CPC of Ukraine International Cooperation in the Course of Criminal Proceedings. Considering the provisions of the Article 208 of the Criminal Procedural Code of Ukraine, an authorized official who has carried out the detention of a person (including a person who committed a criminal offense outside Ukraine) must immediately inform the detainee the grounds for detention and state the offense he is suspected of committing in a language which he understands, as well as to explain his rights. At the same time, a protocol is drawn up on the detention of a person suspected in committing a crime.

The specifics of the detention of a person who committed a criminal offense outside of Ukraine are, above all, in the order of informing prosecutors of different levels about such a detention. If in the case of the detention of a person in accordance with the Article 208 of the CPC of Ukraine we just need to send a copy of the detention report to the prosecutor, then in case of apprehension of a person wanted by a foreign state, in accordance with the Article 582 of the CPC of Ukraine we have immediately to inform the prosecutor about such an action, within the territorial jurisdiction of which the detention was carried out, and to send him a written notification. Such a notification must contain detailed information on the grounds and reasons for the detention, with a copy of the detention protocol.

The prosecutor, within the territorial jurisdiction of which the detention was carried out, must:

1) verify the legality of the detention of a person wanted by the competent authorities of foreign states. In this case, in our opinion (Lytvyn et al., 2022), the prosecutor is obliged to verify the compliance with the domestic legislation on the legitimacy of

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

extradition and foundations for the arrest. The prosecutor must also ensure that the arrested person is the wanted one and study the ways and the relevant grounds for this legal procedure;

2) issue a notice of arrest of the suspect to the corresponding Office of the Prosecutor (Criminal Procedural Code of Ukraine, 2012).

4 GROUNDS FOR ARREST BY THE COMPETENT FOREIGN AUTHORITIES

The Art. 208 of the CPC of Ukraine enshrines the possibility of arresting the suspect. Nevertheless, it concerns the time of the offence. For example, it is possible if a suspect was found at the crime scene during the crime or an attempt to commit it. Another possibility to exercise the arrest if when the witness, the victim, or certain physical evidence testify the crime. The arrest is also permitted if there is a need to prevent a suspect from evading criminal responsibility for having committed a serious offence or an especially serious corruption offense under the legislation of Ukraine of the National Anti-Corruption Bureau of Ukraine.

The research demonstrated that during the arrest authorized persons should resort to the reports of the Ukrainian Bureau of Interpol of the National Police of Ukraine on finding a wanted person according to the Article 582 of the CPC of Ukraine. The Interpol databases are the international tool for investigating criminal offences, aimed to prevent crimes, investigate criminal cases, detain suspects, detect vehicles, items and objects, identify people and including corpses, etc. However, the main function of the Interpol General Secretariat is to conduct and ensure the functioning of international forensic databases.

In this research, the database Persons was used. This database includes the description of the appearance, photographs, fingerprints, IDs of the wanted criminal, information about a crime, the articles of the criminal law that correspond to the crime, the punishment for this type of a criminal offence, details of the court judgement, and possible countries of living.

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

However, the database Persons is published based on a court judgement of the country where the suspect was detected. Therefore, according to the Art. 582 of the CPC of Ukraine, the ground for the arrest of the suspect in a crime committed beyond Ukrainian borders is a document on the selection of a measure of restraint for a suspect by authorized bodies. This document must have the same force in the country of the suspect's location (for instance, a European order must be effective in the Republic of Moldova).

In this regard, in order to establish the foundations for the arrest of the suspect in a crime committed outside the territory of Ukraine, it is essential to amend the Part 1 of the Art. 582 of the CPC of Ukraine with the following wording: "...The arrest of a suspect in a crime committed beyond Ukrainian borders is carried out as a measure of restraint by authorized bodies of another country" (Criminal Procedural Code of Ukraine, 2012). Such proceedings are crucial in carrying out the arrest and extradition. However, there is a need to ensure that the measures enshrined in the law are implemented in Ukraine.

Measures established by the various dispositions of criminal proceedings will be of no or little use, and these tools become platforms with no justification for implementation. However, the problem is that human rights must be always guaranteed at all stages of the criminal proceedings. It means that the basic human rights and freedoms of the suspect must be preserved by two participating countries. On the contrary, it activates the raison d'être of the human rights system within the European Human Rights system.

5 THE OBSERVANCE OF THE SUSPECT'S RIGHTS

In criminal proceedings, the basic right of the arrested is that "everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him" (EU Charter of Fundamental Rights, 2009). These rights are enshrined in the Art. 5 Para. 2 of the European Convention on Human Rights. Thus, in Para. 27 and 28 of the ECtHR judgment in Van der Leer v. the Netherlands case, it can be observed that the ECtHR did not see any reasons for releasing

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

the arrested suspect in accordance with the Art. 5 Para. 2 (Van der Leer v. the Netherlands, 1990).

The national legislation contains similar provisions. Part 4 of the Art. 208 of the CPC of Ukraine states that a competent officer who detained a suspect must immediately inform the arrested about the reasons for his/her arrest in a language spoken by the suspect. Moreover, Part 5 of the Art. 208 of the CPC of Ukraine states that a draft protocol on the arrest of the suspect must be signed by both the officer who issued it and the arrested person. Apart from that, Part 4. of the Art. 104 of the CPC of Ukraine enshrines that the arrested person has a right to get acquainted with the content of the protocol. In addition, Part 2 of Art. 581 of the CPC of Ukraine states that the person who is to be extradited and is not fluent in the state language should obtain the possibility to use a familiar language to make statements, fill in a petition, and speak during the trial. The authorized bodies must provide the interpreter's services and present the suspect with a translation of the court judgement.

However, it is not possible to fulfill these requirements. For example, how can the official explain the grounds for the arrest of a suspect is not proficient in the state language? Moreover, how can a suspect get read the protocol and sign it without speaking the state language? In such cases, the Art. 582 of the CPC of Ukraine provides that the competent official must instantly resort to the interpreter's services. Yet, before the interpreter arrives, the official shall conduct the arrest according to the procedure. When the interpreter arrived, the protocol shall be translated into a language the suspect understands. However, the practical side of this procedure is of concern, that is, how much time it will take for the interpreter to arrive. Consequently, the officials shall ensure the quick arrival of the interpreter to observe the suspect's rights.

Concerning the necessary amount of information on the grounds for the arrest, the ECtHR case law should be considered. The veracity of information shall be estimated in accordance with the circumstances of each case (Fox et al. v. the United Kingdom, 1990). Nevertheless, it is worth noticing that it is not enough to simply communicate the reasons for the arrest in order to observe the provisions of Para. 2 of the Art. 5 of the European Convention on Human Rights (Murray v. the United Kingdom, 1994). The detained person shall receive the information in a simple, accent- and jargon-free language in order to

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

enable them to appeal the lawfulness of the arrest before the court, according to the Para. 4 of the Art. 5 of the European Convention on Human Rights (Fox et al. v. the United Kingdom, 1990).

Nevertheless, the Para. 2 of the Art. 5 of the European Convention on Human Rights does not demand a complete list of convictions against the suspect (Nowak v. Ukraine, 2011). The ECtHR held that if the suspect is detained in order to be extradited, less information can be presented (Kaboulov v. Ukraine, 2010) since the detention for extradition does not presuppose the trial (Shamayev and others v. Georgia and Russia, 2005).

The right to protection is the fundamental right of each person, which is ensured in all basic legal documents. Thus, the Para. 2 of Part 1 of the Art. 581 of the CPC of Ukraine enshrines the right to counsel. It means that a suspect has a right to use the services of the lawyer, who would defend him/her during the criminal proceeding, and meet with the lawyer confidentially. This article also ensures that a suspect has the right to invite a lawyer, while the counsel must consist of an investigator, a prosecutor, and a judge. Yet, the participation of the counsel is not mandatory in case of extradition.

Meanwhile, it can be assured that the person who is subject to extradition must obtain guarantees that the counsel will participate in the proceedings. This is stipulated by the fact that a suspect in a crime committed outside the territory of Ukraine does not know the specifics of the Ukrainian criminal legislation, which places the suspect in an unequal position. In addition, it is necessary to highlight that a suspect does not know his/her rights and tools for their implementation. Therefore, the existing laws shall guarantee a mandatory involvement of the defense counsel in the extradition.

6 PLACE OF ARREST WITHIN THE UKRAINIAN POSITIVE LAW

According to the Art. 29 of the Constitution of Ukraine (1996), the reasons for keeping a suspect under arrest as a measure of restraint shall be verified by the judge within 72 hours. Moreover, according to the Art. 211 of the CPC of Ukraine, the period of the arrest of a suspect cannot be more than 72 hours from the arrest. Furthermore, Para.

REVISTA RELAÇÕES INTERNACIONAIS DO MUNDO ATUAL
unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

1 of the Part 6 of the Art. 582 of the CPC of Ukraine enshrines that the arrested shall be moved to the investigating judge within 60 hours from the arrest in order to choose a preventive measure, that is, a temporary or extradition arrest. On the contrary, the person must be released. In addition, according to the Part 5 of the Art. 583 of the CPC of Ukraine, a petition for a detention shall be studied by the court within 72 hours after the arrest. It means that the court has 12 hours to identify a detainee, verify the legitimacy of his/her arrest by the authorized bodies of foreign countries and decide on a detention or extradition.

Apart from that, the CPC of Ukraine establishes special norms for the arrest of the internationally wanted criminal. Accordingly, having detained such a person, the investigating judge and the court shall study the selected measure of restraint in the form of arrest or chose another measure within 48 hours after the arrival to the investigation site (Part 6 of the Art. 193).

In addition, the Para. 4.8. of the Instructions on the procedure for resorting to the Interpol National Central Office in Ukraine by law enforcement bodies to detect and investigate criminal offences of January 09, 1997 should be considered. It determines that when the wanted person is located or apprehended in Ukraine, the prosecutor is required to inform the NCB about the detention within five days (The Order of the Ministry of Internal Affairs of Ukraine…, 1997).

The study of the case law shows that some circumstances make it impossible to carry out extradition. In such cases, prosecutors file a motion for a temporary arrest of a person after his detention. For instance, on January 10, 2017, the Kelmenetsky district court of the Chernivtsi region received an appeal from Kelmenetsky local prosecutor's office, asking to apply a preventive measure in the form of a temporary arrest to a citizen of the Republic of Moldova PERSON_5. This person was arrested at 2:50 p.m. on January 7, 2017 at the border crossing point Rososhany. According to the report of the working apparatus of the Ukrainian Bureau of Interpol of the National Police of Ukraine, is wanted by the law enforcement agencies of Romania for the purpose of arrest and subsequent extradition to Romania for criminal prosecution for committing a crime of the category of fraud smuggling.

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

The motion was accompanied by a decision of the court on the right and will to preventive arrest of the PERSON for a period of 30 days from the date of this measure. During the trial, it was found out that the detainee PERSON was accused of smuggling cigarettes on the territory of Romania, whereas, according to the legislation of Ukraine, such actions are not criminally punishable and do not provide imprisonment. Therefore, the court issued a ruling to refuse to apply a temporary arrest (Decision No 717/19/17, 2017). Consequently, the investigating judge quite rightly refused to apply a temporary arrest, since the crime for which the person was detained did not impose a sentence of imprisonment under the law of Ukraine.

Thus, it can be determined that the detention of a person who committed a criminal offense outside of Ukraine is a temporary preventive measure that is applied to a person declared to be wanted by a foreign state in case of the election of a preventive measure by the competent authority of a foreign state. It should be emphasized that the procedure for the detention of such persons is carried out in accordance with the criminal procedural legislation of Ukraine. However, in resolving the issue of the lawfulness of detention, the investigating judge must take into account both the provisions of the current CPC of Ukraine regarding the procedure for detention and the procedural execution, as well as special bilateral treaties that most accurately take into account the peculiarities of the legislation of both states.

7 CONCLUSIONS

In conclusion, the authors of this article argue that the detention of a suspect in a crime committed beyond Ukrainian borders is a key element of the extradition procedure in international law.

It is necessary to emphasize that the current legislation on the measures of restraint during extradition should to be amended in order to harmonize it with international legal norms. The authors of this article analyzed the legal framework of Ukraine and the ECtHR case law, identified a particular legal vacuum, and formulated several recommendations

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

to avoid it. These recommendations can be of avail to Ukrainian lawmakers and are as follows:

1) to establish the grounds for the arrest of a suspect in a crime committed beyond Ukrainian borders, with a focus on the selection of a measure of restraint by the authorized bodies being effective in both states;

2) to ensure the mandatory involvement of a defense counsel in extradition;

3) to define the rules for using a detention and an extradition arrest;

4) to remove the norms contained in the Art. 585 of the CPC of Ukraine because it counter the international commitments of Ukraine;

5) to add the clause 10 in the following wording: “the obligatory involvement of a defense counsel must be guaranteed in extradition beginning from the moment of the suspect’s arrest for a crime committed beyond Ukrainian borders” to the Part 2 of Art. 52 of the CPC of Ukraine. It is also necessary to highlight that if the counsel is not fluent in the suspect’s language, they should be assisted by the interpreter.

Therefore, the national legislation should comply with the norms enshrined in the European Convention on Human Rights. According to these rules, the law must be concrete so that a person could know the consequences of his/her actions or inactions. This is the competence of the legislator. However, it depends on the authorized persons issuing as detention order to apply a sensitive approach in order to guarantee the detention to be lawful.

REFERENCES

Case of Fox, Campbell and Hartley v. The United Kingdom. (1990). Applications No.12244/86; 12245/86; 12383/86. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57721%22]}

Case of Kaboulov v. Ukraine. (2010). Application No. 41015/04. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-95771%22]}

Case of Khomullo v. Ukraine. (2014). Application No. 47593/10. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-148229%22]}

Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

Case of Kreydich v. Ukraine. (2009). Application No. 48495/07. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-96116%22]}

Case of Murray v. The United Kingdom. (1994). Application No. 14310/88. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57895%22]}

Case of Novik v. Ukraine. (2008). Application No. 48068/06. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-90332%22]}

Case of Nowak v. Ukraine. (2011). Application No. 60846/10. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104289%22]}

Case of Öcalan v. Turkey. (2005). Application No. 46221/99. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-69022%22]}

Case of Shamayev and others v. Georgia and Russia. (2005). Application No. 36378/02. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68790%22]}

Case of Soldatenko v. Ukraine. (2008). Application No. 2440/07. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-89161%22]}

Case of Van der Leer v. The Netherlands. (1990). Application No 11509/85. Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57620%22]}

Cherniavskyi, S., Holovkin, B., Chornous, Y., Bodnar, V., & Zhuk, I. (2019). International cooperation in the field of fighting crime: directions, levels and forms of realization. *Journal of Legal, Ethical and Regulatory, 22*(3), 1–11.

Constitution of Ukraine. (1996). Retrieved from https://zakon.rada.gov.ua/laws/show/254k/96-vr

Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters. (1993). Retrieved from https://www.unhcr.org/protection/migration/4de4edc69/convention-legal-aid-legal-relations-civil-family-criminal-cases-adopted.html

Criminal Procedural Code of Ukraine. (2012). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text

Decision of the investigating judge of the Kelmenetsky district court of the Chernivtsi region, Teleshman O.V. on the case No 717/19/17 (2017). Retrieved from https://reyestr.court.gov.ua/Review/63959664/

Epihin, A., Zaitsev, O., Tatianina, L., & Mishin, A. (2020). Extradition of a person for criminal prosecution: international law and national aspects. *Revista San Gregorio*, *41*, 121-127. DOI: 10.36097/rsan.v1i41.1490.

European Convention on Human Rights. (1950). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text

Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

Krupskyi, O. P., Dzhusov, O., Meshko, N., Britchenko, I., & Prytykin, A. (2019). Key sources when formulating competitive advantages for hotel chains. *Tourism, 67*(1), 34-46.

Law of Ukraine “On the Accession of Ukraine to the Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees”. (2002). Retrieved from https://zakon.rada.gov.ua/laws/show/2942-14#Text

Levchenko, I., & Britchenko, I. (2021). Estimation of state financial support for non-priority territorial units using the example of bridge construction. *Eastern-European Journal of Enterprise Technologies, 1*, 26-34. doi:10.15587/1729-4061.2021.225524

Lytvyn, N. A., Artemenko, O. V., Kovalova, S. S., Kobets, M. P., & Kashtan (Grygorieva), E. V. (2021). Administrative and legal mechanisms for combating corruption. *Journal of Financial Crime*, Article in Press. DOI: 10.1108/JFC-11-2021-0241

Lytvyn, N. A., Berlach, A. I., Kovalko, N. M., Melnyk, A. A., & Berlach, H. V. (2022). Legal regulation of the state financial guarantees of medical services for the population: Domestic and international experience. *International Journal of Health Governance*, Article in Press. DOI: 10.1108/IJHG-01-2022-0008

Nguindip, N., & Ablamskyi, S. (2020). Ensuring the right to liberty and security of person in Ukraine and Cameroon: a comparative analysis in the area of criminal justice. *Commonwealth Law Review Journal*, 6, 281-304.

Order of the Ministry of Internal Affairs of Ukraine, the Prosecutor General's Office of Ukraine. (1997). Security service of Ukraine “On the statement of the Instruction on the order of use of opportunities of NCB of Interpol by the law enforcement agencies”. Retrieved from https://zakon.rada.gov.ua/laws/show/z0054-97/page#Text

Polishchuk, Y., Ivashchenko, A., Britchenko, I., Machashchik, P., & Shkarlet, S. (2019). European smart specialization for ukrainian regional development: Path from creation to implementation. *Problems and Perspectives in Management, 17*(2), 376-391. doi:10.21511/ppm.17(2).2019.29

Robinson, M., & Moody, L. (2019). Capital punishment, international law and human rights. *International Journal of Criminal Justice Sciences, 14*(2), 298-319. DOI: 10.5281/zenodo.3723480/

Stanić, M. (2019). Neophodnost određivanja pritvora i naknada štete u praksi Evropskog suda za ljudska prava-smernice za Srbiju. In *Prouzrokovanje Štete, Naknada Štete i Osiguranje* (pp. 269-281). Beograd: Institut za uporedno parvo.

Stanić, M., & Andonović, S. (2020). Police detention of football fans as measure of preventing violence in case law of the European Court of Human Rights. *Thematic Conference Proceedings of International Significance*, *10*(1), 65-76.

unicuritiba
Submetido em: 03/06/23
Aprovado em: 02/07/2023
Avaliação: *Double Blind Reviewe*-
ISSN: **2316-2880**

United Nations. (1990). UN General Assembly Resolution 45/116 "Model Treaty on Extradition". Retrieved from https://www.unodc.org/pdf/model_treaty_extradition.pdf

Valieiev, R. (1976). *Extradition of criminals within modern international law (certain issues of the theory and practice)*. Kazan: Publishing House of Kazan University.