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EXTRADITION OF A PERSON: THE NATIONAL LAW OF UKRAINE AND THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT
This article aims at establishing and emulating the relevant issues surrounding the detention of person presumed of committing a criminal offense outside the territory of Ukraine in respect with the provisions adumbrated by the European Court of Human Rights. The study was conducted through the prism of the national legislation and the relevant case law of the European Court of Human Rights. The article articulates, that as far Ukrainian national law and the European Court of Human Rights is concerned, handling issues of detention outside the Ukrainian territory is complimentary. It is the opinion that, the legal basis for the extradition of persons who have committed a crime outside the territory of Ukraine has been determined. It is emphasized that in this case the generally accepted norms and principles of international law conforming with national law of each member state that has ratified relevant international treaty, are important. The peculiarities 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 procedure legislation, are analyzed. It is emphasized that during the law enforcement practice the problem is a clear definition of the grounds for detention of a person wanted by the competent authority of a foreign state. The issues of realization of the detainee's rights, including the right to protection, were considered separately. According to the results of the study, certain ways to improve the provisions of the Criminal Procedure Code of Ukraine have been formulated.

Keywords: extradition; detention; temporary arrest; extradition arrest.

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1 INTRODUCTION

The issues of crime are an aspect which can never be avoidable in any given society. The phenomenon is that when someone commits a crime within territory and escape to another country for fear of persecution. There is that tendency the country where the crime was committed is always asking the country if resident in sending back this criminal to be trialed and persecuted in the country where the crime was committed according to the law of that country. The issue here is that during the process of extradition, it is the responsibility of the demanding state in ensuring that the fundamental right of those detained should be respected and secured. In the context of the growth of transnational crimes, issues of international cooperation of states in the field of tracing and detention of persons who have committed criminal offenses are of special urgency and interest.

The situation in this present dispensation has become interesting and appetising as there are unified and harmonious efforts of states in this direction with its primary objective being that of preserving state sovereignty and security. Aspect of extradition when issues of crime commission is concerned involved one of the main types of international cooperation within criminal proceedings and even most of the time constitutes the most difficult to implement, since it includes not only extradition as it is, but also a set of measures aimed at its ensuring. The importance of legal regulation of the institution of extradition within the system of international cooperation in criminal proceedings carried out by different states is determined by the national interests of each state in order to prevent crime on their territories (Robinson & Moody, 2019).

The authors intention in pinpointing this special interest was in offering a deep understanding of the concept of extradition as an act of legal aid based on international treaties and universally recognized norms and principles of international law that involves the transfer of the accused or convicted by the state (on the territory of which he is located now) to the state requiring his transfer (on the territory of which that person committed a crime or a citizen of which he is), or to the state that has suffered from a crime, for bringing him to criminal liability or for bringing to trial (Valieiev, **1976**).

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It is clear that, in general, the right to liberty and security of a person is of the utmost importance in a democratic society in terms of Article 5 of the Convention (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). The mentioned article is very important, because it is related to the basic principle of modern criminal law - the presumption of innocence. In particular, this means that the person to be remanded in custody must be treated with particular caution, bearing in mind the presumption of innocence. Otherwise, the state on whose behalf the public authorities took the detainee in custody may be obliged to compensate the person who was unjustifiably detained for the damage caused (Stanić & Andonović, 2020).

International human rights law in its aimed of upholding the standard of human protection and safety has stipulated and proscribes that any aspect of arbitrary arrest and detention of persons presumed of crime commission should be questionable and authorize in its entirety. Under no circumstances should someone be arrested arbitrarily even though sufficient evidence shows the commission of the offence. The fact that arrest is a legal basis stipulated in criminal texts, the manner in which it is carried out should be able in respecting the fundamental human right the person arrested especially at the level of their treatment during the detention process awaiting trial (Nguindip & Ablamskyi, 2020) (Figure 1). Thus, the legal institution of extradition has a comprehensive nature, since it performs an integrative function in the field of international cooperation of Ukraine with other states; it serves as the most important instrument for fulfilling international obligations in the field of criminal justice.

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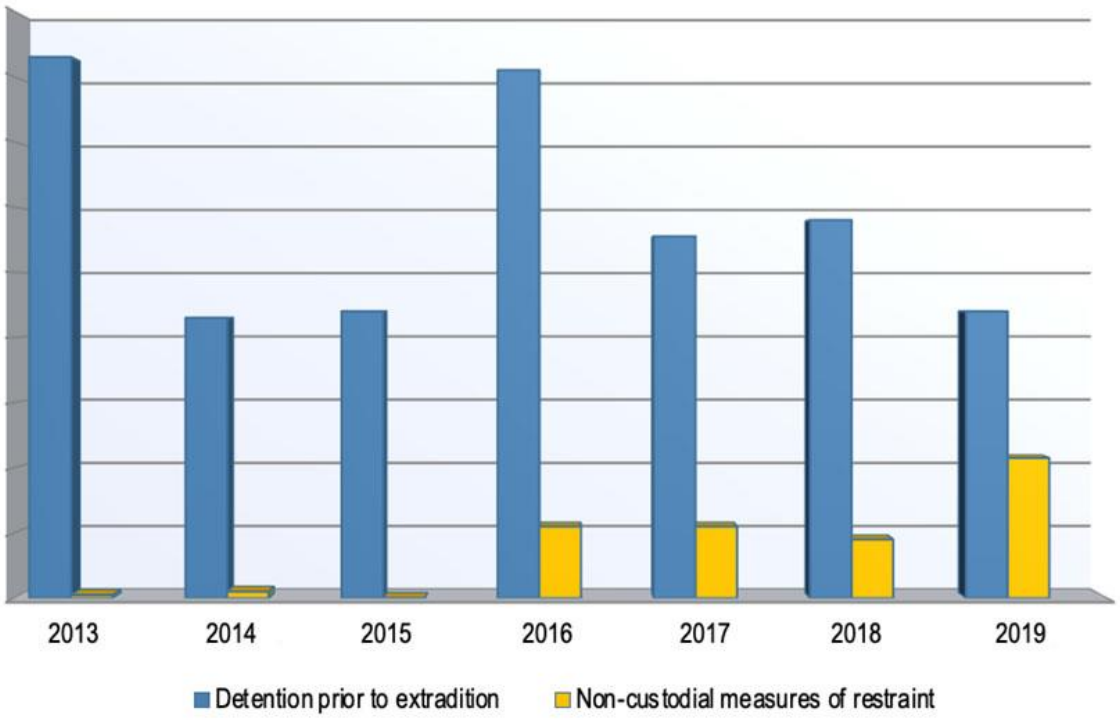

Figure 1. Application of detention prior to extradition and non-custodial measures of restraint to ensure extradition during 2013-2019

This article aimed at establishing and emulating the relevant issues surrounding the detention of person presumed of committing a criminal offense outside the territory of Ukraine in respect with the provisions adumbrated by the European Court of Human Rights (ECtHR). The study was conducted through the prism and euphoria of the national legislation and the relevant case law of the ECtHR. Mentioned above methods were used in the paper with the view of their interconnection and interdependence, which ensured comprehensiveness, completeness and objectivity of the research. The methodological basis is an interdisciplinary approach, where the basis of the theoretical and practical component are the fundamental provisions of the theory of criminal proceedings. An objective analysis of the subject was possible due to the use of a set of methods of general and special scientific knowledge.

Modern methods of scientific knowledge were used while writing the article. In particular, the method of systematic analysis was used by the authors to analyze the decisions of the ECtHR and the benefits of international acts. The comparative legal

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method has helped to reveal the peculiarities of national legislation of Ukraine in comparison with international standards and norms. Documentary analysis made it possible to develop propositions and recommendations for improving the development of national legislation concerning the exercise of departmental control over the activities of judges. The bibliographic method provided the authors with the opportunity to select the necessary number of scientific sources focused on the issue. The researchers used data from documentary study, ECtHR judgments, decisions of national judges on the issue under study and his experience as a police officer. The fact that the main law governing issues of protecting the right of the offender is well articulated and explained in the ECtHR system in which Ukraine is a party. The ECtHR has established a standard in which those involved in extradition must be respected by member countries.

Our main worry here is at the level of Ukrainian domestic law as to extradition. What will be the situation where the so called ECtHR standard contravenes that put in place by the country in question? Will Ukraine jeopardize its territorial security and the most fundamental, sovereignty in respecting the provisions of the ECtHR system as to the subject matter in question? We think this is as aspect of rational and rethinking platform when aspect of state security and sovereignty is threatened. It is acceptable concept that there is a need of unifying laws especially in aspect of criminal proceedings, but as far as the security of the state is concerned issues of this nature has to be questionable.

2 THE NEED FOR RECOGNIZING AND DETERMINING THE LEGAL BASIS FOR THE EXTRADITION OF OFFENDERS

Today United Nations (UN) documents are of great importance. The UN works in several areas, including upholding peace and security by helping nations and parties negotiate with each other and by seeking peacekeeping forces. It also delivers humanitarian aid and promotes sustainable development across the globe. Most relevant for this paper is that the UN works to promote and protect human rights — those rights laid out in the 1948 document, the Universal Declaration of Human Rights. The UN upholds international law. The Preamble to the UN Charter states that its purpose is “to

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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).

Of fundamental interest and explanation, the issue of extradition of offenders is governed by the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters of 1993 (Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters, 1993). This Convention was ratified by the Law of Ukraine dated from October 10, 1994 with the appropriate reservations, and it became effective for our country on April 14, 1995. We should also name among important international documents the Model Extradition Treaty, adopted by the Resolution of the General Assembly of the United Nations on December 14, 1990 (UN General Assembly Resolution 45/116, 1990). Equally important is the 1951 Convention relating to the Status of Refugees, the Protocol on the Status of Refugees of 1967, to which Ukraine acceded on January 10, 2002 (Law of Ukraine, 2002), and which include provisions on the extradition of offenders, as well as the grounds for the extradition of persons granted with the refugee status.

Since 1992 and till now, Ukraine has concluded a number of bilateral international treaties with other countries of the world regulating the issues of international cooperation in realizing criminal proceedings, including during the extradition with different countries with the aimed of ensuring that aspect of extradition should be handled with utmost importance. The issue here is that handling issue of extradition is a complex and sometimes time demanding, as it can affect the relationship existing between the states of the said regional grouping in question. But the question one need in posing here is a verifying whether with the treaties in place, can the Ukrainian state compromise its internal security so as in respecting the provisions put in place by the bilateral agreements.

The situation at hand becomes of high debate in issues related to extradition, like that of bilateral international treaties of the former USSR are still in force in Ukraine. They are applied within the succession procedure, and are concluded with such states as: The People's Republic of Albania (Agreement .., 1958), the Federal People's Republic of Yugoslavia (Agreement .., 1962), the Iraqi Republic (Agreement .., 1973), the Republic of Finland (Agreement .., 1978), the People's Democratic Republic of Algeria (Agreement ..,

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1982), the People's Democratic Republic of Yemen (Agreement .., 1986), the Tunis Republic (Agreement .., 1984), the Republic of Cyprus (Agreement .., 1984).

This notion of the law put in place has been a glorified platform even though plagued with the problem of enforcing laws regard to the situation, when it is necessary to extradite a person to a state, which has not concluded an international treaty with Ukraine. In this case, the practice of the ECtHR should be taken into account. In particular, the § 87 of the judgment on Öcalan v. Turkey, the ECtHR found out the following: in regard to the arrangements on the extradition existing between the states, one of which is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, and another is not, the norms established by the extradition treaty or, in the absence of such a treaty, the terms of cooperation of such states are also considered as essential factors to be taken into account in determining whether the arrest, which became the basis of a complaint to the Court, is lawful.

The fact itself of the refugee's extradition as a result of the cooperation of the states does not make the detention unlawful and, accordingly, does not provide reasons to any questions under the Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Öcalan v. Turkey, 2005). Considering this decision, one can understand that even in cases, when a person has been apprehended on the territory of Ukraine and who is a citizen of a non-member state of the Council of Europe, such a detention can be admitted legal.

Recently, the relevant practice of the ECtHR has been formed regarding the violations by Ukraine of the Articles 3, 5, 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms while hearing the extradition cases by national courts. An example of this may be the following rulings in the cases of Novik v. Ukraine (2008), Soldatenko v. Ukraine (2008), Kreydich v. Ukraine (2008), Khomullo v. Ukraine (2014). Consequently, these and other rulings of the ECtHR should be taken into account in the law-enforcement practice of law enforcement authorities, the extradition court.

Thus, the system of sources of law regulating the issue of extradition consists of generally accepted principles and norms of international law, international treaties of Ukraine, the Constitution, the Criminal Procedure Code of Ukraine (hereinafter the CPC of Ukraine), the Criminal Code of Ukraine, ECtHR R rulings, norms of other regulatory

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acts. At the same time, it should be emphasized that the procedural aspects of the extradition, and in particular the application of preventive measures, are regulated by special bilateral treaties that most accurately take into account the peculiarities of the legislation of both states.

3 UNDERSTANDING THE PHENOMENON OF DETENTION OF A PERSON WHO COMMITTED A CRIMINAL OFFENSE OUTSIDE THE TERRITORY OF UKRAINE

Extradition and detention is a pre-extradition stage of the cooperation between states in the field of counteraction to crime and is carried out in order to ensure the possibility of sending a request for extradition by diplomatic channels, which may last a long time and make it impossible to hide suspects from pre-trial investigative agencies and the court.

International cooperation in the criminal prosecution of perpetrators of crimes is an impetus for the modernization of law enforcement, regardless of existing contradictions. The execution of extradition is a manifestation of the goodwill of the issuing state and a confirmation of its adherence to global standards for the protection of values that are significant for humanity from unlawful encroachments. In this regard, the extradition of persons who have committed not only conventional but also conventional crimes is carried out (Cherniavskyi et al., 2019; 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 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

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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, the prosecutor must check the observance of national legislation on the legality of the procedure and the grounds for the detention of such a person. The prosecutor must also verify the correspondence of the

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detained person to the wanted person and the possibility of extradition to the requesting party and the proper reason for extradition;

2) execute and immediately send a notice of the detention of a person wanted by the competent authorities of foreign states to the relevant regional prosecutor's office (Criminal Procedure Code of Ukraine, 2012).

4 RATIONALE FOR DETENTION OF A PERSON WANTED BY THE COMPETENT AUTHORITIES OF FOREIGN STATES

The Article 208 of the CPC of Ukraine contains cases, when it is possible to detain a person suspected of committing a crime. However, they are related to the time of the crimes commission (for example, if a person was caught in the commission of a crime or an attempt to commit it, or if the witness, including the victim, or a set of obvious signs on the body, clothing, or place immediately after the crime was committed, indicate on the fact that this person has just committed a crime) or there are reasonable grounds to believe that a possible escape is possible in order to evade the criminal liability of a person suspected of committing a serious or particularly serious corruption offense, classified by the law to jurisdiction of the National Anti-Corruption Bureau of Ukraine.

According to the research, authorized persons during the detention of a person in accordance with the Article 582 of the CPC of Ukraine refer to the reports of the Ukrainian Bureau of Interpol of the National Police of Ukraine on finding a wanted person. Interpol databases can be viewed as a global instrument for combating crime, in particular for the prevention, detection and investigation of crimes, the detection of persons (suspects, defendants, convicts, missing persons), vehicles, items and objects, identification of persons who cannot report any information about themselves, including sick people and children, unidentified corpses, etc. One of the key functions of the Interpol General Secretariat is the creation and guarantee of operation of international databases of forensic and investigative information.

In the frames of our study, the most interesting is the database Persons or a red-corner message that contains the description of the appearance, photographs,

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fingerprints, passport numbers and other documents of the wanted person, legal information a crime for the commission of which a person is suspected, the articles of the criminal law this act is provided for, what punishment is applied for the commission of such crimes, reference to details of the court decision which determined a preventive measure, the probable countries of residence.

It should be emphasized that the Interpol red-corner message (the database Persons) is not itself a reason for the detention, but is published on the basis of a court decision of the state, which detects a person (in particular, a warrant for arrest). We believe that the reason for the detention of a person who committed a criminal offense outside of Ukraine, in accordance with the Article 582 of the CPC of Ukraine is the existence of a procedural document on the election of a preventive measure for such a person by the competent authorities of a foreign state or another order, which has the same force and issued in accordance with the procedure provided by the legislation of a foreign state (for example, a European order or preventive arrest under the legislation of the Republic of Moldova).

Regarding the above mentioned and in order to determine the reasons for the detention of a person who committed a criminal offense outside Ukraine, we believe it is necessary to supplement Part 1 of the Article 582 of the CPC of Ukraine with the following wording: ... Detention of a person who committed a criminal offense outside Ukraine is carried out in case of the election of a preventive measure by a competent authority of a foreign state (Criminal Procedure Code of Ukraine, 2012). All these procedures put in place is important in effecting the phenomenon of extradition and detention, but the question one need to be answering now is in determining whether the measures posits by the law are implemented within the confines of the Ukrainian territory.

It will be of no it little use of establishing measures by the various criminal proceedings dispositions, and these instruments becomes mere dressing and admirable platform with no grounds of implementation. The issue here is not even the extradition or detention process in nature, we just have to understand here that aspect of human rights protection is always necessary in every stage of the criminal proceedings whether the person committed the offence or not. There is the need in ensuring that the fundamental human rights of the accused or offender should be respected by both countries be it

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residing country or country demanding the extradition. In case such human right is not respected, then it will therefore affect the raison d'être of the human rights system especially that put in place by the European Human Rights system.

5 THE ISSUES OF IMPLEMENTING INDIVIDUAL RIGHTS OF THE DETAINED PERSON

In every matter relating to criminal proceedings, one of the fundamental rights of the detainee is the right to be immediately informed in a language understandable to him about the reasons for his arrest and about any charges against him. This is directly indicated in the Article 5 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court noted in §§ 27 and 28 of the ECtHR judgment of Van der Leer v. the Netherlands, that there are no grounds for excluding a person who is detained in custody for the extradition purpose from the scope of the Article 5 § 2 (Van der Leer v. the Netherlands, 1990).

Similar provisions are established in the national legislation. Thus, according to Part 4 of the Article 208 of the Criminal Procedural Code of Ukraine, an authorized official who has carried out the arrest, must immediately inform the detainee the grounds for his detention and the commission of which offense he is suspected of in a language, which he understands, and to explain his rights. Besides, Part 5 of the Article 208 of the CPC of Ukraine provides for the drafting of a protocol on the detention of a person suspected of committing a crime, which is signed by the person who executed it and the detainee. Also Part 4. of the Article 104 of the CPC of Ukraine states that before signing the protocol participants of the procedural action are given an opportunity to get acquainted with the text of the protocol. In order to properly exercise human rights, the legislator in Part 2 of the Article 581 of the CPC of Ukraine provided that the person who is under the consideration of the extradition and who does not speak the state language, shall be provided with the right to make statements, to file a petition, to speak in the court in the language he speaks, to use the services of an interpreter, and to obtain a translation of a

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court decision and the decision of the central agency of Ukraine in the language he used during the process.

However, these provisions do not answer such questions. How can the authorized official to inform immediately the reasons for the detention of a person who does not speak the state language? What is the required scope of information about the reasons for the detention? Besides, how can a detainee get acquainted with the protocol and sign it without proper acknowledgement? In this case, it is provided that in case of the detention of a person in accordance with the Article 582 of the CPC of Ukraine, an authorized official must immediately engage an interpreter. However, prior to the arrival of an interpreter, an authorized official must process the detention in a procedural manner by executing a protocol. In the nearest future, upon arrival of an interpreter, the detention protocol must be translated into a language understandable for the detainee and all the provisions of Ukrainian legislation must be explained to him. The problem of practical and organizational nature lies precisely how fast the interpreter may arrive. Therefore, the investigator, the prosecutor must take measures to quickly ensure the arrival of an interpreter in order to comply with all the rights of the detained person.

In regard to the clarification of the issue of establishing the required scope of information on the reasons for the detention, one should refer to the practice of the ECtHR. The adequacy of the provided information should be assessed according to the specific circumstances of each case (Fox et al. v. the United Kingdom, 1990). However, the simple indication of the legal grounds for the arrest is not sufficient to comply with the objectives of the Article 5 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Murray v. the United Kingdom, 1994). Arrested persons must be informed in a simple, accessible, non-professional language of substantial legal and the actual reasons for the arrest, in order to enable them, if they deem it appropriate, to go to court to appeal the lawfulness of the arrest in accordance with the Article 5 § 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Fox et al. v. the United Kingdom, 1990).

However, the Article 5 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not require the information to include a complete list of convictions against the arrested person (Nowak v. Ukraine, 2011). The ECtHR points out

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that in case, when a person is arrested for the purpose of the extradition, the information may be provided to a lesser extent (Kaboulov v. Ukraine, 2010), since the arrest for such purposes does not require the existence of a judgment on the merits of the convictions. However, such persons must be provided with sufficient information to enable them to go to court to consider the lawfulness of their detention in accordance with the Article5 § 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Shamayev and others v. Georgia and Russia, 2005).

One of the fundamental rights of every person is the right to protection, guaranteed both at the international and national levels. The paragraph 2 of Part 1 of the Article 581 of the CPC of Ukraine guarantees the right to have a defense counsel and meet with him under conditions that ensure the confidentiality of communication, the presence of a defense counsel during interrogations to a person who is under the procedure of extradition. Under these provisions, a person has the right either to independently invite a lawyer or, at his request, a defense counsel must be involved by an investigator, a prosecutor, an investigating judge, a court. However, the participation of a defense counsel in the process of solving the issue of extradition of a person is not mandatory.

At the same time, we are convinced that the person who is under the procedure of extradition must be guaranteed with the obligatory participation of the defense counsel. This is due to the fact that a detained person who committed a criminal offense outside Ukraine may not understand the provisions of the Ukrainian criminal and criminal procedural legislation, which puts the person who is the subject to extradition and the criminal justice authorities in an admittedly unequal position. It is also important that such a person does not understand his rights and mechanisms for their implementation and protection. Regarding the above mentioned, we believe that the current legislation must provide the obligatory participation of a defense counsel while considering the issue of extradition of a person.

6 CONCRETISING THE PLACE OF DETENTION IN UKRAINIAN POSITIVE LAW

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Article 29 of the Constitution of Ukraine stipulates that the justification for holding a person in custody as a temporary preventive measure must be checked by the court within seventy-two hours (The Constitution of Ukraine, 1996). Provisions of the Article 211 of the CPC of Ukraine established that the term of detention of a person without the order of an investigating judge, the court cannot exceed seventy-two hours from the moment of detention. The period of detention of a person established by the legislator for 72 hours is also referred to the detention of a person wanted by the competent authorities of foreign states. Besides, according to the paragraph 1 of Part 6 of the Article 582 of the CPC of Ukraine, such a person must be transferred to an investigating judge within sixty hours from the moment of his detention to consider a motion to elect a preventive measure in the form of a temporary or extradition arrest. Otherwise, such a person should be released. Part 5 of the Article 583 of the CPC of Ukraine established that a petition for a temporary arrest should be considered by the investigating judge as soon as possible but not later than seventy-two hours after the person was detained. That is, an investigating judge has no more than 12 hours to establish a detainee's personality, to decide on the legality of the detention of a person wanted by the competent authorities of foreign states and to make a decision on the application of a temporary or extradition arrest.

The CPC of Ukraine also provides certain specific rules for the detention of a person declared to be internationally wanted. Thus, after the detention of a person declared to be internationally wanted, no later than forty-eight hours after he is brought to the place of the criminal proceedings, the investigating judge, the court with the participation of the suspect, accused should consider the use of the chosen preventive measure in the form of detention or his change to a milder preventive measure (Part 6 of the Article 193).

In resolving these issues, we should also consider the paragraph 4.8. of the Instructions on the procedure of using the possibilities of the Interpol National Central Office in Ukraine by law enforcement agencies to prevent, detect and investigate crimes dated from January 09, 1997, which states that in case of apprehension or establishment of the wanted persons location on the territory of Ukraine, the initiator of his international search is obliged immediately , but in any case no later than 5 days, to inform the NCB in

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order to inform the law enforcement agencies of foreign countries about the termination of the search (The Order of the Ministry of Internal Affairs of Ukraine…, 1997).

An analysis of judicial practice demonstrates that there are cases, when prosecutors after the detention of a person file a motion for a temporary arrest in those cases, when we establish the circumstances under which the extradition is not carried out. For example, on January 10, 2017 a prosecutor of Kelmenetsky local prosecutor's office appealed to the Kelmenetsky district court of the Chernivtsi region with the motion to apply temporary arrest to a citizen of the Republic of Moldova PERSON_5, since at 14:50 on January 7, 2017 at the border crossing point Rososhany a detained citizen of the Republic of Moldova PERSON_5 who, 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.

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

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special bilateral treaties that most accurately take into account the peculiarities of the legislation of both states.

7 CONCLUSIONS

In conclusion, it should be concluded that the use of preventive measures against a person who committed a criminal offense outside of Ukraine is an integral part of the extradition institution in criminal procedural and international law.

It should be emphasized that the provisions of the current criminal procedural law that regulates the procedure of the application of preventive measures during the extradition are to be improved and brought into line with international legal acts, in particular, it is necessary:

1) to determine the grounds for the detention of a person who committed a criminal offense outside the borders of Ukraine, which is the existence of a procedural document on the election of a preventive measure for such a person by the competent authorities of a foreign state or another order which has the same force and issued in accordance with the procedure provided for by the legislation of a foreign state;

2) to provide the obligatory participation of a defense counsel in the process of extradition of a person who committed a criminal offense;

3) to determine the content and requirements for applying the temporary arrest and extradition arrest;

4) to exclude the provision of the Article 585 of the CPC of Ukraine as contradicting the international obligations of Ukraine;

5) we suggest to amend Part 2 of the Article 52 of the CPC of Ukraine with the clause 10 in the following wording: in the process of extradition of a person who committed a criminal offense from the moment of apprehension of a person who committed a criminal offense outside of Ukraine. We should stress that in case, when the lawyer does not speak the language spoken by the client, their meetings should be conducted in the presence of an interpreter.

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Thus, it is necessary for domestic law to meet the standards of the so-called “True laws” established by the Convention. More precisely, it is a standard that requires the precision of the law, which allows a person to predict the consequences of his actions or inactions. It is also understandable that, in addition to precision, which in any case enables predictability of the law, the existence of clear procedural provisions is required. These preconditions which are in the competence of the legislator and which the legislator, above all, should take into account. However, when a valid law is adopted, it is up to the persons ordering detention to take a sensitive approach to ensure that detention is applied in accordance with its purpose.

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