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Review Article

Extradition from and to Iraq (Some Necessary Remarks)

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Abstract

This article is devoted to the Iraqi legal framework for extradition (passive and active). It is compared to foreign and international laws on this most important and difficult modality of international judicial cooperation in criminal matters. The research examines the peculiarities of both treaty-based and extra-treaty extradition from and to Iraq. It reveals the major weaknesses of Iraqi law on extradition and offers tentative recommendations to overcome them by improving legislation and through practical work.

Keywords: Iraq, country, extradition, international agreement, law, request, human rights.

I. GENERAL CHARACTERISTICS OF EXTRADITION

1. Extradition is the oldest form of international collaboration between countries for cooperation in matters of crime control. To this end, they exchange fugitive offenders. This is the most typical and, at the same time, most difficult modality of international judicial cooperation in criminal matters.

Extradition refers to the surrender of a wanted person by one country to another "*by virtue of a treaty, reciprocity or comity"* [4, 269]. In view thereof, extradition could be defined as a complex legal-political instrument that allows a country to surrender to another country a person found within the territory of the former and sought by the latter as an accused or sentenced there for a crime(s) that carrries imprisonment punishment.

2. Extradition, especially the one of sentenced persons, should be distinguished from the transfer of prisoners. This is because, despite the different rules that govern them, the two modalities of international judicial cooperation are sometimes confused, because transfers are often understood as extradition[1]. This is why it is necessary to punctually differentiate transfer and extradition.

A. First of all, it is required for any transfer that the sentenced person be a national of the receiving country (or, in exceptional cases, its permanent resident) at the time the decision on transfer is made. The person must be a national of the receiving country, as his/her rehabilitation [6, 1043] is more likely to occur there. It is well established that the rehabilitation of sentenced persons is the primary objective of this form of international cooperation. Therefore, even if the person has acquired another nationality while still retaining the nationality of the sentencing country, transfer to the country of his/her new nationality may be preferred if it would increase the likelihood of successful rehabilitation [2].

In contrast, an extraditee does not need to hold nationality or even permanent residence in the receiving country [1, 3135]. Usually, it is sufficient that s/he is not a national of the country surrendering them. In general, Continental-European ("Civil Law"/Latin) countries do not extradite their own nationals – for example, Article

[1]. For example, in 2019, the Iranian Islamic Republic News Agency announced that on 13 February 2019, Iran extradited ten Somalis to their homeland. They were defined as Somali nationals who had been convicted in Iranian courts for piracy. Actually, the Somalis were transferred to Somalia as prisoners rather than extraditees. No extradition for executing the punishments imposed on them took place – from https//en.irna.ir/news/ 83208644/Iran-extradites-10-Somalia-convicts, accessed on 14.12.2024.

[2] See P. 4 of the Explanatory Report to the Convention on the Transfer of Sentenced Persons, p. 20. Strasbourg, Council of Europe Publishing House, 1983.

38(11) of the Turkish Constitution and Article 25(2)(ii) of the Ukrainian Constitution.

B. When it comes to transfer, the law of the surrendering country is inevitably applicable to the crime of the transferee. Otherwise, he or she could not have been held criminally responsible in that country. Conversely, in extradition, it is necessary that the law of the requested country is not applicable – for example, Article 8.1 of the Bulgarian Law on Extradition and the European Arrest Warrant, and Article 11(1)(c)(4) of the Turkish Law on International Judicial Cooperation in Criminal Matters. In fact, it is sufficient that the law of the receiving country is applicable to the crime of the wanted person. Otherwise, extradition has no purpose: the receiving country can neither detain and prosecute, nor try and punish the extraditee for the crime. Penal repression for any other criminal activity of the person is even less likely, as it is prohibited by the principle of speciality (see Article 14 of the European Convention on Extradition and Article 52 of the Riyadh Convention[3]).

The applicability of any penal law to a given crime is determined by the time of its commission. In the case of a transferee, it is most likely that he or she committed the crime outside the territory of the receiving country and had not yet become its national. As a result, none of the typical principles triggering applicability support the application of the receiving country's penal law: neither the territoriality principle (e.g., Article 7 of the Kazakh Penal Code (PC) and Article 8 of the Turkish PC), nor the personality principle (e.g., Article 8(1) of the Kazakh PC and Article 11 of the Turkish PC). Thus, the chances of applying the penal law of the receiving country are minimal. Nevertheless, unlike extradition, the non-applicability of the receiving country's penal law to the crime of the sentenced person does not constitute any obstacle to his or her transfer.

C. It is noteworthy that, since the sentenced person is available in the territory of the sentencing country, justice can be accomplished without transfer. He or she could serve the full term of imprisonment there.

This result, however, is not achievable for persons wanted for extradition if they are not surrendered to the requesting country, which prosecutes or executes the punishment imposed on them. Persons wanted for extradition reside in a country which, in most cases, neither prosecutes nor executes any punishment imposed on them. In such cases, punishment is executable only in exceptional situations: if the country in question takes charge of foreign criminal proceedings and finalizes them with an imprisonment sentence, or assumes responsibility for the execution of such a foreign punishment.

Foreign countries usually initiate these two modalities of international judicial cooperation to substitute an impossible or rejected extradition (for prosecution/trial or execution of imprisonment, respectively) from the country of the wanted person's residence. Such substitutions are most common when extradition is not granted because the wanted person is a national of the country where s/he resides. As a result, there would be no prosecution or punishment in another country. On the other hand, the fact that this person is a national of the country where s/he resides allows prosecution and punishment "at home" if requested by other countries. His/her nationality never constitutes an impediment for the country of residence to take over foreign criminal proceedings (e.g., Articles 24(1)(a) and 25(1)(b) of the Turkish Law on International Judicial Cooperation in Criminal Matters, and Articles 595(2)(1) and 599(2) of the Ukrainian Criminal Procedure Code (CPC)), or to take over execution of punishment imposed (e.g., Articles 109(2)(a) and 114(1)(a) of the Moldovan Law on International Judicial Cooperation in Criminal Matters, and Articles 26(1) and 28(1)(a) of the Turkish Law on International Judicial Cooperation).

D. Lastly, no extradition depends on the will of the wanted person. S/he can never prevent it from being carried out. Consent may only accelerate the proceedings (triggering the so-called simplified extradition), but it is not necessary for a positive conclusion of the procedure.

Moreover, extradition law does not require any objection (explicit or implicit) by the wanted person to attend the criminal or execution proceedings against him/her in the requesting country. Therefore, no prior summoning of this person from the country of residence (the potential requested country), nor his/her subsequent failure to appear before the competent judicial authority in the potential requesting country, is necessary for the institution of extradition proceedings.

II. EXTRADITION FROM IRAQ

From the Iraqi point of view, this is passive or "export" extradition. Such an extradition involves a request by the appropriate authorities of another country to the competent authorities of Iraq to surrender a fugitive found in Iraq who is either a defendant (accused or indictee) or has been convicted (sentenced) of a criminal offence in the requesting country.

If the Iraqi authorities do not reject the foreign request but grant and execute it, instead, Iraq would get rid of the wanted person. S/he is, usually, such a foreigner (as Iraq does not extradite nationals – Article 21.1 of the Iraqi Constitution), who is not welcome in Iraqi territory.

[3] Full name: Riyadh Arab Agreement for Judicial Cooperation (1983).

1. In this regard, extradition resembles the domestic (unilateral) administrative procedures of deportation and expulsion of a foreigner – *see* Articles 1 (10 and 11), 14-20 of the 1978 Iraqi Law on Foreigners' Residence No. 118. However, in contrast to these procedures, extradition is essentially for the benefit of the requesting country. It is designed to ensure the carriage of efficient justice, thereby bringing the wanted person to court and eventually avoiding criminal proceedings *in absentia* against him/her and/or, correspondingly, by bringing the person to prison to serve the punishment imposed on him/her. The requested country's benefit is solely an inevitable secondary consequence of the surrender, as it frees itself of a person who potentially, at least, is a likely source of trouble and problems within its territory, as well as being allegedly related to some criminal activities as a possible or actual criminal offender.

More often, though, the requested country (incl. Iraq, when in this position) has nothing specific against the wanted person. This is the reason why s/he has decided to reside, for a longer or a shorter period of time, in its territory. In most cases, that country has no legal grounds to deport or expel the person and no need to get rid of him/her either.

However, even in cases where the requested country has the grounds to deport or expel the person from its territory, including on the basis of the information from the request for his/her extradition, no other country shall expect and/or plan to directly obtain the surrender of the person through his/her deportation or expulsion by the requested country. Such a final result may be achieved only if the requested country carries out the so-called disguised (contrived or fraud) extradition in favour of the other [3, 213]. This sort of "extradition," though, is generally not encouraged and shall not be expected, let alone planned. It is in gross violation of human rights standards because it deprives the wanted person of normal extradition proceedings where s/he might exercise his/her procedural rights to get a decision for refusal of his/her extradition. Although attractive for some law enforcement officers, this action is always a prohibited procedure as it deprives the wanted person of his/her specific rights of defence in extradition proceedings. These rights are in any case more efficient and useful than the rights in any deportation or expulsion procedure.

Iraq, however, lacks any legal text that may exclude such violations of human rights. Its law contains neither a provision expressly prohibiting disguised extradition[4] nor a provision disallowing other forms of unacceptable surrender of the wanted person abroad in case of extradition proceedings against him/her at the request of some foreign country [5]. As a result, abuses in this field are not ruled out.

It is a delicate situation. On the one hand, no deportation or expulsion to a requesting country amounts to any abduction of the wanted person. Therefore, no prosecution trial and/or punishment of the person in the interested country might be defined as illegal. The maxim "*Male captus, bene detentus*" (Lat.: Wrongfully captured but properly impisoned) stays. It allows a court to proceed with a trial even if the accused was apprehended through irregular or unlawful means, as long as the trial itself is conducted fairly and justly.

On the other hand, other countries are also bound by the fair trial principles. This is why they shall do their best to avoid any unjustified participation in (encouraging, assisting, etc.) or benefiting from breaking them. Extradition from Iraq should be the key means for obtaining the wanted person.

2. Article 352 (ii) outlines the sources of Iraqi passive extradition law. It reads as follows:

> "… *in the extradition of accused and sentenced persons the instructions stipulated in this chapter will be followed in consultation with the regulations of international treaties and agreements and the principles of international law and the principle of reciprocity*."

This text distinguishes between the two components of the Iraqi legal framework for passive extradition: the domestic one which consists of Articles 357-367 in the mentioned chapter (it is 2 - EXTRADITION OF CRIMINALS), and the international component which includes international extradition agreements to which Iraq is a Party [6].

[4] Such as Article 33 of the Bulgarian Law on Extradition and European Arrest Warrant: "No surrender of a person through transfer, expulsion, repeated surrender at the state border or in any other way used to conceal an extradition shall be allowed."

[5] Such as §13 [Primacy of Extradition] of the Austrian Law on Extradition and Mutual Assistance: "If extradition proceedings are pending against a foreign citizen, or if there are sufficient grounds to institute such proceedings, it shall not be admissible to remove him/her from Austria on the basis of other legal provisions."

[6] It is much more complicated, consisting of:

- bilateral treaties (focused on extradition issues only or regulating other issues relating to international judicial cooperation as well), such as: the Extradition Treaty between the United Kingdom and the Kingdom of Iraq, 05 May 1933, the Extradition Treaty between the Kingdom of Iraq and the United States of America, 23 April 1936, and correspondingly, Article 17-38 of the Treaty on Legal Assistance between the People's Republic of Hungary and the Republic of Iraq, 24 October 1977, Article 22-36 of the Treaty on rendering

The role of international law is recognized. However, it is not stipulated that in case of conflict, this law takes precedence over domestic provisions. It might be a positive step if Iraqi legislation creates an explicit provision on the priority of international law. Otherwise, international agreements cannot produce the desired effect and would not have much meaning. In this way, potential misunderstanding and confusion might be avoided, both in Iraq and other countries as well, given the difficulties, sometimes unexpected, in extradition relations.

Besides, if multilateral agreements (UN conventions, usually) with rules on extradition proceedings regulate extradition from Iraq, the possible Iraqi reservations and declarations of this country to the Convention should be studied and taken into account. This is because some Parties to a given Convention might have deposed declarations or reservations that they do not consider it as a legal basis for extradition. If Iraq is such a Party, requesting countries should not refer to it when approaching Iraqi authorities on extradition issues[7].

3. There might be no international agreement on extradition between Iraq and the foreign country (such as Kazakhstan, for example) interested in obtaining the extradition of some fugitive offender residing in Iraqi territory. Other countries with the same type of law (Continental-European/Latin), like Iraq, refer to reciprocity as a subsidiary extra-treaty condition for extradition[8] [7, 4].

Reciprocity is mentioned in the quoted text of Article 352 of the CPC. However, it is not defined[9] neither its significance in not clearly determined as a separate condition for extradition, taken into account where no extradition treaty (agreement) exists between the requested and the requesting country [[10]]. The text of Article 352 could be improved by separating reciprocity with a coma so that it is recognized as a condition for extradition, independent from treaties (agreements). Otherwise, some foreign countries may not see in Article 352 of the CPC a text providing for reciprocity as a separate and subsidiary condition. This would unnecessarily complicate extradition relations with Iraq. For the time being, foreign countries might be advised to clarify in advance this issue with the Iraqi authorities to eventually make sure that reciprocity works also in Iraq as a separate and subsidiary condition for extradition.

A foreign interested country may invoke reciprocity with Iraq by action or by words. It can do this by action if that country has already considered an Iraqi request for extradition. It is not necessary that the request was granted. This is understandable: the non-execution alone shall not bring any negative consequences. If the requested country is not obliged to grant treaty-based extradition if it is contrary to the agreement with the requesting one, the requested country is less obliged to grant any extra-treaty extradition for which no agreement exists, and only its national law is applicable.

Subsidiarily, if a foreign interested country had never considered any Iraqi request for extradition, it may invoke reciprocity with Iraq by words. To this end, the other country should promise Iraq to consider Iraq's future extradition requests despite the absence of an extradition agreement between the two countries. Such a promise would result in creating reciprocity if it can be kept because the other promising country recognizes reciprocity as an extra-treaty condition for extradition. Hence, if a foreign country, even with a Continental-European type of law, allows only treaty-based extradition, it cannot provide any such promise to eventually invoke reciprocity relations with Iraq and convince Iraqi authorities to consider its request for extradition. Such "Latin law" countries are, for example,

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mutual legal assistance between the (former) Union of the Soviet Socialist Republics/USSR [still in force for Russia and some other former USSR countries] and the Republic of Iraq, 22 June 1973; and

- multilateral agreements (containing rules on extradition): regional, such as: the Riyadh Convention, and, in particular, its Articles 38-57 dedicated to extradition, and also universal conventions in the penal field, such as: the UN Convention against Transnational Organized Crime [ratif. by Iraq on 17 May 2008] and in particular, its Article 16 on extradition, the UN convention against corruption [ratif. by Iraq on 17 March 2008] and in particular, its Article 44 on extradition, the International Convention for the Suppression of the Financing of Terrorism [ratif. by Iraq on 16 November 2012, accession], and in particular, its Article 11 on extradition, etc.

[7] For example, Pakistan has deposited the following declaraion to the UN Convention against Corruption:" *The Government of the Islamic Republic of Pakistan declares that pursuant to Article 44, Paragraph 6, of the Convention, it does not take this Convention as the legal basis for cooperation on extradition with other States Parties*".

[8] However there are countries with this type of law that recognize only treaty-based extradition.

[9] Some national laws contain legal definitions of reciprocity, e.g. § 3 of the Austrian Law on Extradition and Mutual Assistance and Aerticle 17 of the Croatioan Law on Mutual Legal Assistance in Criminal Matters.

[10] Appropriate examples are: Article 4 (2) of the Bulgarian Law on Extradition, Article 3 (1)(a) of the Turkish Law on International Judicial Cooperation, Article 544 (1) of the Ukrainian CPC and others.

the Netherlands (see Section 552hh.1 of the Dutch CPC), Somalia (see Article 36.1 of the Somali Constitution) and some others [8, 29].

Countries with the Anglo-Saxon type of law do not directly recognize reciprocity as an extra-treaty condition for extradition. Usually, their extra-treaty condition is individual permission by the President or another a senior official of the requested country for launching extradition proceedings in favour of the requesting country [11] or the prior inclusion of the requesting country in the requested country's list of countries designated for extra-treaty extradition [12]. Hence, Iraq is likely to accept reciprocity with such a country if Iraq has been included in its list of designated countries, if any. Alternatively, reciprocity is likely to be acceptable if the foreign country promised the issuance of individual permission for launching extradition proceedings in favour of Iraq once it receives its extradition request or promised the inclusion of Iraq in its list of designated country before receiving the Iraqi extradition request.

4. Iraqi's law does not expressly require the applicability of the requesting country's penal law to the crime for which extradition is requested. Certainly, this requirement might be drawn out from Article 357 (A) of the Iraqi CPC. It reads that "*the person who is the subject of the request should:*

1. Be accused of committing an offence which took place either inside or outside the state requesting the extradition… or
2. Have been sentenced by the state requesting extradition…"

In both situations, the requesting country has followed its penal law in accusing and sentencing (punishing) the wanted persom as its judicial authorities have found it applicable to the crime s/he committed.

However, this is not necessarily the case. Sometimes, the presumption might be wrong, as the other country could have made a mistake or could have deliberately and lawlessly assumed foreign jurisdiction for some reason, e.g. conflict with the country, entity or territory whose penal law is the only applicable one. Is such situations, Iraqi authorities are not authorized to deny extradition due to a gap in the CPC. On the other hand, this gap puts requesting countries in a better position. It is one issue less for consideration and potential mistakes by the authorities of requested Iraq.

Also, the Iraqi penal law might be simultaneously applicable to the crime of the wanted person. In such a sitiation of conflicting laws, different options exist.

(i) Iraq shall reject the extradition as per Article 358 (3) of the CPC, if its judiciary has already decided the case (a) by rendering a final judgement for the crime, "*a verdict of guilty or not guilty has been passed*" – the *ne bis in idem* principle, or (b) by discontinuing the criminal proceedings for the crime on the grounds that they "*have expired under the terms of Iraqi law*". Besides, under the same provision, Under Article 358 (3) of the CPC, the Iraqi authorities shall also reject any foreign extradition request if the foreign criminal proceedings, for which extradition is sought, *have expired under the terms of the law of the state requesting…extradition",* such as amnesty and lapse of time, though unknown to Iraq, in general.

(ii) In the other cases, Iraq would reject the extradition if, in accordance with Article 368 (B)(2) of the CPC, it decides to prosecute on its own the wanted person under Iraqi law [13]. The CPC makes no difference whether he is accused in the requesting country and wanted for prosecution and trial, or is already sentenced in the requesting country and wanted for the execution of the punishment imposed on him there.

5. Even if Iraq does not carry out disguised extradition but grants a normal one, instead, its authorities may commit another serious violation of human rights. The violation concerns the right to life. This right is proclaimed in and protected by Article 6 of the International Covenant on Civil and Political Rights [ICCPR]. The convention is binding on the Iraqi authorities. It entered into force in 1976; Iraq ratified it in 1971.

The problem occurs in cases where the extradition sought is in respect of a crime which carries the death penalty only in the requesting country but not in Iraq, also. Therefore, Iraqi law, though widely providing for such a punishment, does not prescribe it for the particular crime in respect of which extradition is requested. In such a situation, since Iraq does not impose and execute the death penalty for the given crime, it *a fortiori* should not support other countries in doing this as it would eventually violate Article 6 of the ICCPR.

Obviously, extradition relations are not excluded from the obligation to honour the right to life. On the contrary, Article 3 (1), Item 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Iraq ratified it in 2011) specifically forbids authorities of requested Parties to the Convention from "extraditing a person to another state

[11] See Section 3, § 1 от the Zambian Law on Extradition.

[12] E.g. Part I, p. 5.1 от of the Australian Law on Extradition.

[13] See also Article 9 (2) of the UAE Law on International Judicial Co-operation in Criminal Matters.

where there are substantial grounds for believing he would be in danger of being subjected to torture", regardless of whether the requesting country is also a Party to this Convention or not. The most serious problem with torture arises when extradition is requested in respect of a crime that carries the death penalty. This is the most severe kind of torture. It constitutes an absolute impediment to extradition, unless the crime for which the extradition is sought carries the same punishment under the penal law of the requested country.

The prohibition of torture, including for protection of life, is proclaimed also in Article 7 of the ICCPR. In accordance with this Article of the ICCPR, all persons shall be protected from torture. This is inevitably valid for persons wanted for extradition.

In view thereof, Iraq, as a party to that Convention, is obliged to reject any extradition request, whenever its authorities find that the person might be tortured in the requesting country. This obligation is applicable not only to relations with other parties of the International Covenant. It applies to third countries as well. The UN Human Rights Committee also noted that '*if a state party extradites a person ..., and if, as a result, there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party may be in violation of the Covenant'* (Communication No. 469/1991, United Nations Doc: CCPR/C/49/D/ 469/1991, Paragraph 14.2).

Therefore, in situations where the extradition sought is in respect of a crime which carries the death penalty only in the requesting country Iraq shall require its elimination: it shall not be imposed or if imposed shall not be executed. Regretfully, Iraq has yet no legal text in this sense to guarantee the implementation by its authorities a fuller implementation of Article 6 of the ICCPR. Such a text might be borrowed from Section 12 of the UN Model Law on Extradition (2004):

> "*If the offence for which extradition is requested carries the death penalty under the law of the requesting State and is not so punishable under the law of the [country adopting the law], extradition [shall not be granted] [may be refused], unless the competent authorities of the requesting State give assurances considered sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.*"

6. Under Article 368 (B)(4) of the CPC of Iraq, the Iraqi nationality of the wanted person is a mandatory ground for refusal to extradite him/her. Neither the Constitution of Iraq nor the Iraqi CPC prescribes when the wanted person shall be an Iraqi national to avoid extradition. Normally, as extradition is a procedural institution, "*Nationality shall be determined as at the time of the decision concerning extradition*" – Article 6 (1)(c)(i) of the European Convention on Extradition. Contrary to this provision, Article 39 (2) of the Riyadh Convention stipulates that nationality shall be determined as at the time of the commission of the crime for which the extradition is requested. Obviously, before approaching Iraq on the nationality of the person sought for extradition, the relevant moment for its determination should be clarified.

It is, more or less, beneficial to requesting countries to obtain extradition from Iraq if the wanted person is not its national. Once his/her extradition is carried out, the full responsibility of penal repression on this person for the crime, s/he committed, lies on the requesting country. Iraq would not be interested in his/her fate there, as the requesting (receiving) country has taken over the Iraqi criminal or execution proceedings against the surrendered person, either. Exceptionally, Iraq might be interested in learning whether or not the receiving country complies with the speciality principle towards the extraditee, who is not its national, but would never be interested whether or not this person is pardoned there, in particular.

For more clarity on the issue, it might be useful to explain that the lack of interest about possible pardon does not characterize countries surrendering a transferee. As such countries enforce their criminal judgment on him/her, not all of them are disinterested whether or not s/he is pardoned in the receiving country. Under the European model, the receiving country is allowed to pardon alone transferees at its discretion; no permission of the surrendering country is needed. Such a pardon, however, is not allowed under the non-European model, as the consent of the surrendering country is required in one way or another. Article 13 (1) of the British Commonwealth Scheme for the Transfer of Offenders, Article VIII [Sentence 2.1] of the Inter-American Convention on Serving Criminal Sentences Abroad and Article 61 (2) of the Riyadh Convention expressly disallow Parties from pardoning of received transferees unless the sentencing Party agrees.

In case the person sought is wanted for prosecution and/or trial, dual criminality [3, 508] and dual minimal punishment is required[14]. Under Article 368 (A)(1) of the CPC, s/he must "be accused of committing an offence which took place either inside or outside the state requesting the extradition and the offence should carry a prison sentence of not less than two years under the laws of the state requesting extradition and of Iraq". If the person is wanted for

[14] It goes without saying that each and every individual country decides on its own how to describe the deeds (acts and omission) it decides to criminalize. However, to facilitate extradition and the ascertaining dual criminality, it would be wise to follow acceptable models if such exist in UN Conventions to eventually achieve harmonization at the international level.

execution of punishment, then, under Article 368 (A)(2) of the CPC, s/he must have "been sentenced by the state requesting extradition to a prison sentence of not less than six months". Dual criminality of the criminal offence is not mentioned for this second case. Obviously, it is an unjustified omission. Dual criminality is a core feature of any contemporary extradition law [15].

The non-compliance with the alternative requirements under Article 368 (A) of the CPC constitutes a mandatory ground for refusal. Regarding the dual criminality, in particular, it is to be mentioned that often (as in Croatia, Germany, Sweden, etc.) its existence is considered by the time of the decision on the extradition request. Hence, even if by the time of its commission the offence constitutes a crime solely under the law of the foreign requesting country and not under Iraqi law, the extradition may, nevertheless, be granted if meanwhile, Iraq as the requested country criminalizes the deed (act or omission). Obviously, this issue should also be clarified in advance with the Iraqi authorities.

Either way, determining the dual criminality of the offence for which extradition is sought may not always be an easy task. Different problems may occur.

The first problem a foreign country requesting extradition from Iraq is likely to encounter may stem from insufficient harmonization of Iraqi penal law with foreign laws and specifically, the UN models for the description of extraditable crimes. Because, sometimes, their legal descriptions are unexpectedly different from those of other countries, it might be difficult to establish that the offence for which extradition is sought constitutes a crime under the penal laws of both countries: the requesting one and Iraq. The Iraqi legal description of terrorism is a proper example in this regard [16]. One can hardly find such a description in another country. To avoid risks, it would be wise to clarify in advance with the Iraqi authorities whether the offence, for which extradition might be sought, is a crime under their law too.

The second problem a country requesting extradition from Iraq is likely to face, may come from the way Iraqi authorities understand dual criminality. Its question should be: is it sufficient for them that the wanted person's conduct fulfills legal descriptions of crimes in both countries or is it also necessary that his/her conduct is also punishable in both countries? In other words, if in Iraq, it is not punished (initially [17] or the criminal responsibility for it terminated afterwards [18], will the Iraqis accept that dual criminality exists? In case of doubt, the foreign country would act wisely if it clarifies in advance with the Iraqi authorities whether they recognize such a dual criminality, which is not accompanied by dual punishability. If Iraq does not, the requesting country has to prove that the respective circumstance, exempting from punishment or terminating the criminal responsibility of the wanted person, has not occurred.

The third problem a country requesting extradition from Iraq might face is whether only legal descriptions of crimes are taken into account for determining dual criminality. It is not ruled out that, in addition, the defences for crime (justifications and excuses) are considered for this purpose. The justifications might be very different. For example, in Iraq, it is not a crime if the husband punishes his wife in

[15] An alternative to the system of dual criminality still exists in Iraq, though. Whereas the dual criminality system is called the eliminative or minimum imprisonment system, its alternative is the so-called enumerative or enlisting system. This alternative system, a bit outdated, contains an exhaustive list, specifying all deeds (acts, omissions) in respect of which extradition may be granted. An appropriate example of the system is Article 3 of the Extradition Treaty between the United Kingdom and the Kingdom of Iraq. It reads: "Extradition shall be reciprocally granted for the following crimes or offences: (1) Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder, (2) Manslaughter, (3) Administering drugs or using instruments with the intent to procure miscarriage of women, (4) Rape", etc.

[16] According to Article 1 (Definition of Terrorism) of 2005 the Iraqi Anti-terrorism law, "Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals". It can be compared to Article 214 (1) of the Azeri PC, for example: "Terrorism, that is commitment of explosion, arson or other actions creating danger to destruction of people, causing harm to their health, significant property damage or approaches other socially dangerous consequences committed with a view of infringement of public safety, intimidation of population or rendering of influence to acceptance of decisions by the state authorities or international organizations, and also threat of commitment of a specified actions in a same purposes".

[17] E.g. under Article 373 (3) of the Iraqi PC, "the spouse, ancestor, descendant, brother or sister of the runaway" prisoner or detainee shall not be punished for shedering him/her. The corresponding Article 433 of the Kazakh PC does not contemplate any such ground for non-punishability of the perpetrator.

[18] E.g. under Article 398 in conj. with Article 393 (1)(i) of the Iraqi PC, if the rapist lawfully marries the female victim, he shall not be punished. The corresponding Article 120 or any other Article of the Kazakh PC does not contemplate any such ground for blocking the criminal responsibility of the perpetrator.

accordance with law and custom – Article 41 (1) of the Iraqi PC. It goes without saying that such an act constitutes a crime in most other countries. This is why if such a modern country requests extradition from Iraq for a crime that involved harming own wife, this foreign country would have to prove that it was not a "disciplinary punishment" or, at least, it has violated Iraqi law or custom. Issues of this sort should also be solved in advance with the Iraqi authorities.

In the end, it is worth highlighting that it is not sufficient that, in addition to the dual criminality requirement, the crime of the wanted person shall carry a minimal imprisonment punishment (2 years) or such a punishment shall already be imposed for it on the person (6 months remaining). Dual punishability of this person for his/her crime is necessary also. Under Article 358 (3) of the Iraqi CPC, "*Extradition is not permitted… if the criminal proceedings have expired under the terms of Iraqi law or of the law of the state requesting his extradition*". Obviously, the other kind of extradition, which is for service of the imposed punishment, would not make any sense either, if the criminal execution proceedings for the punishment have expired. This is a legislative gap. However, a foreign country would hardly of obtrain extradition from Iraq for punishment if the execution proceedings expired because the punishment imposed has extinguished under the Iraqi law or its law.

7. A mandatory ground for refusal may also arise from the specific nature of the criminal offence in respect of which extradition is sought. Under Article 358 (1) of the Iraqi CPC, "*Extradition is not permitted…, if the offence for which the extradition is requested is a political or military offence under Iraqi law*".

Per argumentum a contrario, all others beyond the exception in the quoted text, including the fiscal and religious offences, shall be deemed to be extraditable crimes in Iraq. No exception shall be construed expansively to eventually shrink the general rule that offences are extraditable if the other requirements (especially about the punishment they carry) are satisfied. This is why Iraqi authorities are not expected to deny extradition on the grounds that extradition is sought from them for a fiscal or religious offence.

Although these two types of offences are no grounds to refuse extradition from Iraq, they may impede extradition to Iraq from other countries. Thus, extradition to Iraq might be excluded on the grounds that the offence, for which it seeks extradition, constitutes a fiscal or religious offence under the law of the requested country.

8. Article 368 (B)(2) of the Code, proclaims another mandatory ground for refusal: the fact that "*the offence could be tried before the Iraqi courts in spite of occurring abroad*". The provision makes no difference whether the offender is accused in the requesting country and wanted for prosecution and trial, or s/he is already sentenced in the requesting country and wanted for the execution of the punishment imposed on him/her there. The procedural status of the wanted person in the requesting country is irrelevant.

The quoted text of Article 368 (B)(2) contains an internal contradiction. It is a matter of evaluation whether or not it is possible to successfully conduct criminal proceedings in Iraq for a crime committed in another country, including the requesting one. Thereafter, on the basis of this evaluation, it is decided whether to reject the requested extradition (in case it is concluded that the proceedings in Iraq might be successful) or to grant the extradition (in case it is concluded that the proceedings in Iraq cannot be successful). This means that the ground for refusal in question, deriving from a subjective evaluation, is essentially optional rather than mandatory. Such is this ground in other countries and under international agreements as well. It follows after all that requesting countries are interested in convincing Iraq that they are likely to be incomparatively more successful in prosecuting trying and/or punishing the wanted person. If the requesting country is the one where the crime was committed, the possibility to find in its territory most evidence would be a good argument for Iraq.

It is good to know also that accessory extradition is not allowed under the Iraqi CPC. Its Article 357 (B) stipulates that when "the person whose extradition is requested has committed many offences the request for extradition will be considered valid if the conditions are met for any one of them". Thus, if a given offence is non-extraditable because it does not meet the conditions the extradition in respect of it would be rejected [19].

Pending criminal proceedings and punishment executions in Iraq have the same significance as in other countries and under international extradition laws as well. Thus, extradition shall be denied if it is in respect of a crime for which criminal proceedings or punishment execution is under way in Iraq or there is a final court decision in Iraq for the same crime – Article 358 (3) of the CPC. In case of criminal proceeding and punishment execution for a different crime in Iraq, postponed extradition might be granted until the conclusion of these legal proceedings if the other requirements are fulfilled – Article 358 (3) of the CPC.

[19] In contrast, Article 2 (2) of the European Convention on Extradition, for example, allows aaccessory extradition.

It is noteworthy that in extradition matters the "same criminal offence" means factual coincidence: the same deed (act of omission) with coinciding constitutive peculiarities. Legal coincidence is not necessary: the deed would not be different solely because it does not have the same legal qualification and/or name in Iraq.

9. Lastly, Article 364 of the CPC provides for the full extradition detention of persons wanted from Iraq. This provision reads as follows:

> "*The Minister of Justice has the right to ask the Iraqi authorities to monitor the person who is the subject of the extradition request until all the documents required have been presented or passed to the court; in this case the Iraqi authorities must take adequate precautions to monitor the person or to place the matter before the investigative judge in his geographical area for a decision to detain or release him taking into account the provisions of Article 109*."

Another provision on extradition detention exists in the same chapter. It is Article 364 which reads:

> "*The court has the right to hold the person whose extradition is requested until it has finished its measures taking into account the provisions of Article 109*."

Logically, this legal text may refer to nothing else but provisional extradition detention. But if it really designed to somewhat regulate provisional detention for extradition it is to be highlighted that one can find such a legal text in any other country.

To draft a useful text one must be aware that in most cases provisional extradition detention of a wanted person is granted at the petition of an interested foreign country. The detention is limited in time (not more than 60 days) pending the official/formal request of the foreign country for the extradition of the wanted and detained person.

Most often, the petition is dispatched and accepted by the country of the wanted person's residence on the basis of an agreement with the interested petitioning country (multilateral [20] or bilateral [21] or in case no such agreement to regulate the issue exists, on the basis of the petitioned country's domestic law[22].

Apart from the detentions in response to petitions, a specific provisional detention without any petition also exists. Most often, such detention in the initial country is carried out under an agreement with the interested country – see Article 34 (1) of the Treaty on rendering mutual legal assistance between the (former) USSR [still in force for Russia and some other former SU countries] and the Republic of Iraq.

This detention might obviously be to the benefit of the other Party of the treaty only. However, the national laws of some countries allow the mentioned detention in favour of all other countries in the world, e.g. Article 605 (3) of the Uzbek CPC. Yet, this can hardly be a good example to follow.

The provisional detention in question is unjustifiably open to all foreign countries and foreigners in the world. As a result, any sufficiently powerful organization or person may produce false information that a foreigner residing in the country has committed a crime in some other faraway land and present this information to the prosecutors in charge of extradition matters. Article 605 (3) of the CPC contains no restrictions regarding the prerequisites, at all. In some situations, the foreigner, though detained for only 72 hours, might be severely harmed. S/he may miss something of vital importance to him/her or his/her relatives. If this result would be very good for the interested organization, its people would be interested in corrupting the prosecutors in charge. Therefore, Article 605 (3) of the Uzbek CPC, hardly found in other countries[23], poses unjustified risks, mostly.

III. EXTRADITION TO IRAQ

From the Iraqi point of view, this is active or import extradition. Such an extradition involves a request by the Iraqi competent authorities to the appropriate authorities of another country to surrender to Iraq a fugitive offender found in that country, who is either a defendant (accused or indictee) or has been convicted (sentenced) of a criminal offence in Iraq. If the other country does not reject the Iraqi request for extradition but grants and executes it, that foreign country gets rid of the wanted person who, usually a foreigner (generally, own nationals are not subject to extradition), is not welcome there.

Basically, Article 368 of the CPC of Iraq exhausts the Iraqi legal framework for this extradition. It reads:

> "*If the Iraqi authorities request the extradition from abroad of an accused person or criminal so that he can be tried or can complete a sentence already passed on him, this request must be put to the Ministry of Justice attached to the documents stated in Article 360*[24] *to take*

[20] E.g. Artticle 16 of the European Convention on Extradition and Articles 43 and 44 of the Riyadh Convention.

[21] E.g. Article 31 (1) of of the Treaty on Legal Assistance between the People's Republic of Hungary and the Republic of Iraq.

[22] E.g. Article 41 of the Bosnian Law on Mutual Legal Assistance in Criminal Matters.

[23] Another exception is Article 14 (2) of the Turkish Law on international judicial cooperation.

[24] Under this Article 360, "The extradition request is to be submitted in writing through diplomatic channels to

the necessary steps to request his extradition by diplomatic means."

This text regulates the internal Iraqi procedure of active extradition. It determines the responsible institution and the communication channel for outgoing extradition requests.

Undoubtedly, though, it is the external procedure of active extradition that is the important one for Iraq as everything is in the hands of the requested country in accordance with its passive extradition law. This procedure develops in its territory; it is regulated by the international extradition agreements of that country with Iraq, if any – see footnote № 9. In case no such agreement exists, the domestic law of the requested country governs this procedure. Iraq is interested in obtaining the results of the application of that other country's legal framework on passive extradition. This is why the Iraqi authorities should know it.

In general, Iraqi domestic law on passive extradition (Article 352 and Articles 357-367 of the CPC) resembles the other countries' legal frameworks for this extradition. It is not significantly different from them. In view thereof, mostly their chief distinctions from Iraqi domestic law are identified and examined.

1. Under Article 358 (1) of the Iraqi CPC, non-extraditable from Iraq is any "*political or military offence under Iraqi law*". Per argumentum a contrario, all others beyond the exception, including the fiscal and religious offences, shall be deemed to be extraditable crimes in Iraq. This is why Iraqi authorities are not expected to deny extradition on such grounds.

This is not valid for all other countries as well. The extradition laws of some of them may treat also the fiscal offences[25] and (rarely) the religious offences[26] as non-extraditable crimes. Thus, although these two offences are no grounds to refuse extradition from Iraq, they are likely to impede extradition to Iraq from other countries. Because the laws of requested country and their national interpretation there determine whether or not a given crime constitutes a fiscal or a religious offence, the interested Iraqi authorities might be advised to clarify in advance this issue with the competent authorities of the other country.

2. Unlike Iraq, most other countries consider themselves legally obliged to reject any extradition request whenever their competent authorities find substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons [[27]]. Rules in this sense exist also in many international agreements to which Iraq is a Party. For example, such assumptions by the requested country constitute a mandatory ground to refuse extradition under Article 47 of the Agreement on Legal and Judicial Cooperation between the Republic of Turkey and the Republic of Iraq (1992).

Iraq cannot seek any reciprocity with other requesting countries to overcome this ground for refusal, referring to its non-existence in its domestic law. This is because all these countries are usually bound by applicable law to reject extradition if the Iraqi request has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

3. The most serious problem that Iraq may face when it requests extradition from a foreign country derives from the death penalty issue. It is well-known that many countries in the world have totally abolished the death penalty. Others have prescribed it only for the most heinous crimes. In contrast to them, Iraqi law prescribes this penalty for a comparatively larger number of crimes.

So, it should not be any surprise if Iraq requests extradition in respect of a crime which carries the death

the Ministry of Justice with the following documents attached if possible: 1. A full statement about the person whose extradition is requested, his description, his photo and papers confirming his nationality if he is a citizen of the stale requesting his extradition; 2. An official copy of the arrest warrant giving the legal description of the offence and the penalty applied and a copy of the investigation papers and of the judgment passed on him. In order to expedite matters the request may be made by telegram or telephone or post without attachments".

[25] As per § 15 (2) of the Austrian Law on Extradition and Mutual Assistance, "*Extradition shall be not be admissible for punishable acts which, according to Austrian law, are exclusively… a violation of stipulations relating to taxes, monopolies or customs duties, or of foreign exchange regulations, or of stipulations relating to the control of or foreign trade in goods*".

[26] Usually law does not define expresly such offences as non-extraditable crimes. However, extradition in respect of them may be evaluated inacceptable on the grounds that the wanted person, if surrendered, is likely to be ill-treated in violation of Article 3 of the European he Convention for the Protection of Human Rights and Fundamental Freedoms – see Court CASE OF N.M. v. RUSSIA (Application no. 29343/18), at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-198719%22]}, accessed on 17 Aug 2025.

[27] E. g. it is a mandatory ground for refusal under Artice 29 (1) of the Georgian Law on International Judicial Cooperation in Criminal Matters and Article 3 (2) of the European Convention on Extradition.

penalty under Iraqi law but not under the requested country's law, also. Because almost all foreign countries are obliged to oppose torture (Article 7 of the ICCPR) they would inevitably require reliable guarantees against the imposition of this punishment in case that the wanted person is extradited to Iraq[28]. Respectively, if the death penalty has been already imposed, reliable guarantees against its execution would be required if the wanted person is extradited to Iraq [[29]]. In this case, the Iraqi authorities shall actually give sufficient assurance that the imposed death penalty will be commuted to a more lenient one. Regretfully, Iraq has done almost nothing so far to cope with the situation and eventually obtain the desired extradition.

A. Usually, the declared expectation that the Parliament or the President of Iraq would, at its discretion, commute the death penalty to some imprisonment is not any acceptable assurance. This was the unsuccessful policy of Turkey (as a party to the European Convention on Extradition), for example, in this regard. It was expressed in a Turkish reservation to the Convention, before that country abolished the death penalty. Thus, when Turkey sought the extradition of an accused person for a crime that carried the death penalty, the Turkish authorities stated, in accordance with their reservation, the following: "Our court will impose this penalty on him but thereafter, our Parliament may commute it to imprisonment". This explanation was not found satisfactory and other parties to European Convention on Extradition rejected the Turkish request.

This was the text of the Turkish reservation (contained in a letter from the Ministry of Foreign Affairs, dated 30 November 1957, handed to the Secretary-General at the time of signature, on 13 December 1957):

> "*In the event of extradition to Turkey of an individual under sentence of death or accused of an offence punishable by death, any requested Party whose law does not provide for capital punishment shall be authorised to transmit a request for commutation of death sentence to life imprisonment. Such request shall be transmitted by the Turkish Government to the Grand National Assembly, which is the final instance for confirming a death sentence, in so far as the Assembly has not already pronounced on the matter".*

So, this Turkish reservation from the time when the death penalty existed in that country is not an appropriate example of any reliable assurance of ruling out the death penalty.

B. The actual assurances sought and accepted, more or less, are two types:

a/ The first is a legislative (normative) one where the law of the requesting country envisages an automatic conversion of the death penalty upon the demand of the requested country. For example, there may be a provision in the law of the requesting country that "*capital punishment shall not be imposed, and if already imposed shall not be put into effect with regard to a person extradited by a foreign country under such condition. In this case, the capital punishment stipulated in the law or imposed shall be replaced by 30 years imprisonment*"[30].

Bulgaria had such a provision in its Penal Code (Article 38, para. 3) before the abolition of the death penalty. The demand of the requested country was sufficient to automatically exclude the death penalty on the extraditee. The necessary effect is achieved: even if the surrendered person does not die in prison he would inevitably be neutralized both physically and morally. This is a much lesser evil compared to the other option: the fugitive offender remains free and works against the authorities of Iraq from abroad.

b/ The second type of assurance from the requesting country for exclusion of the death penalty might be an individual (*ad hoc*) one, namely: a declaration by a high state official that the death penalty will inevitably be commuted in all cases. It would also be sufficient that the

[28] Especially for countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application. Thus, they may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence would not be carried out. Accordingly, the UN Human Rights Committee found Canada to be in violation of Judge's right to life guaranteed under Article 6 (1) of the ICCPR by deporting him to the United States, where he was facing a death sentence, without seeking prior assurance from the latter state that the death sentence would not be implemented when imposed by the courts (HUMAN RIGHTS COMMITTEE, Judge v. Canada, 2003, para 10.4-6), at: https://sur.conectas.org/en/human-rights-extradition-death-penalty/, accessed on 18 Aug 2025.

[29] E.g. according to Article 14 of the Kosovian Law on International Legal Coohtration in Criminal Matters, "*Extradition is not permitted for criminal offences which according to the requesting country are punishable by death penalty, unless the requesting state gives sufficient assurances that the death penalty will not be imposed or carried out*".

[30] It is noteworthy that the conversion to life-long imprisonment may no satisfy all countries because some of them do not accept this punishment either They do not extradite in respect of crimed that carry it - see Article 274(iii)(2) of the Brazilian Decree № 9.199/20 Nov 2017 and Article 6(1)(f)(ii) of the Portuguese Law on International Judicial Cooperation in Criminal Matters.

death penalty, although imposed after the extradition, remains unexecuted later. The purpose of the assurance is only to rule out the carrying out of that punishment. Such assurance could come from the President of the requesting country, the Vice President, the Prime Minister, the Minister of Justice, the Minister of Foreign Affairs or another high state official.

In this case, it is not the level of the state official that is relevant. The relevant issue is whether or not the domestic law of the requesting country gives this official the judicial power to commute the death penalty. It is never sufficient to receive a promise that the death penalty is ruled out. It is also necessary to receive the legal provision of the requesting country that makes it possible to keep this promise. Otherwise, no such promise is acceptable as a means to rule out the death penalty and the extradition request would most likely be rejected.

4. There is another specific distinction of Iraqi law: Articles 357-367 of the CPC. Contrary to other countries' laws, the law of Iraq does not include lapse of time among the mandatory grounds to refuse extradition. It is true that pursuant to Article 358 (3) of the Iraqi CPC, "*Extradition is not permitted … if the criminal proceedings have expired under the terms of Iraqi law or of the law of the state requesting his extradition*". However, lapse of time is not mentioned in this text [31] as, generally, no such a circumstance exists in Iraqi panal law to entail the expiry of criminal proceedings (the one of criminal execution proceedings is forgotten) and eventually render extradition unjustified.

Extradition makes sense if the criminal responsibility of the wanted person or his/her punishment has not been extinguished. If it has, extradition is pointless. As, most often, lapse of time extinguishes criminal responsibility and imposed punishment [**32**], it has been proclaimed by foreign extradition law as a mandatory ground to deny extradition.

Contrary to other countries, more or less exceptionally, Iraq has generally no lapse of time in its national law [33]. Under its PC, no expired period of time (even equal to the lapse of time period in other countries) generally extinguishes in Iraq criminal responsibility and/or imposed punishment of any wanted offender. Hence, as lapse of time does not exist to extinguish any of them, it cannot make the extradition of the offender pointless, either. His/her extradition to Iraq still makes sense.

It follows that no expired lapse of time period of time (including one equal to a foreign lapse of time period) can justify in Iraq the denial of his/her extradition abroad. This is why Iraqi law on passive extradition does not contemplate lapse of time as a ground to reject incoming (foreign) extradition requests.

As a result, there is no balance between Iraq and other countries on the issue. Foreign requested countries have lapse of time in their PC-s. It extinguishes criminal responsibility and/or imposed punishment. For this reason, the laws of these countries contemplate lapse of time as a mandatory ground to reject incoming extradition requests.

Outgoing requests for extradition from Iraq are rejectable on the ground of lapse of time. Iraq cannot benefit from the absence of lapse of time in its PC and the following impossibility to deny foreign extradition requests on this ground. Even extradition treaties do not remove this inequality.

Such inequality appears when considering the penal law of the requested country and, in particular, the Party requested by Iraq. For example, under Article 23 (3) (i) of the Treaty on Legal Assistance between the People's Republic of Hungary and the Republic of Iraq, "*If under the law of the Contracting Party applied to exemption from prosecution or punishment has been acquired by lapse of time or on other legal grounds*" [34]. On the basis of this provision, Hungary as such a Contracting (requested) Party is allowed to reject extradition to Iraq if it finds under its PC that the criminal responsibility or the punishment of the wanted person has extinguished due to lapse of time. It makes no difference that if Iraq is the Contracting (requested) Party, it cannot do the same with extradition requests from Hungary. As Iraq has no lapse of time, it cannot, in turn, establish any to reject extradition to Hungary on this ground.

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[31] Unlike, for example, Article 26.3 of the Treaty on rendering mutual legal assistance between the (former) USSR [still in force for Russia and some other former SU countries] and the Republic of Iraq.. It stipulates that "*Extradition shall not take place:… If, under the law of the Contracting Party applied to, exemption from prosecution or punishment has been acquired by lapse of time or on other legal grounds*".

[32] These are the primary consequences of lapse of time, given its substantive law nature [2, 4; 5, 181]. As a derivative consequesnce the criminal proceedings or the criminal execution proceedings, respectively are excluded (in this sense *the criminal proceedings have expired* – Article 358.3 of the CPC). This is why they shall not be instituted or if instituted, they shall be terminated.

[33] Exceptionally, Article 253 of the Iraqi Customs Law and Article 70 of the Iraqi Juveniles Welfare Law contemplate some lapse of time periods but even without any grounds for their interruption or suspension.

[34] Similar is Article 26.3 of the Treaty on rendering mutual legal assistance between the (former) USSR [still in force for Russia and some other former SU countries] and the Republic of Iraq..

Therefore, the competent Iraqi authorities, seeking extradition from other countries, need to unilaterally find their legal frameworks for lapse of time. Thereafter, Iraq as a requesting country shall calculate on the basis of relevant circumstances, though having occurred in its territory mostly, whether or not the lapse of time has expired under the laws of requested countries. The circumstances to be identified and evaluated also include those that entail interruption and suspension of the running lapse of time period, as per the applicable foreign law.

Finally, the absence of lapse of time in Iraqi law causes another inequality. It appears when it comes to considering the penal law of the requesting country. This time, the inequality is in favour of Iraq. Under Article 358 (3) of the CPC, the Iraqi authorities shall reject any incoming extradition request if the foreign criminal proseedings, for which extradition is sought, *have expired under the terms of the law of the state requesting…extradition"*. As other countries have lapse of time in their penal laws, Iraq can establish it and reject their extradition requests on this ground. In turn, other countries cannot do this with Iraqi extradition requests as, in general (with the two mentioned exceptions), it has no lapse of time in its penal law.

5. Unlike some other countries, Iraq has no clear domestic rules on the applicability of its penal law and the one of the other (the requested) country to the crime for which extradition might be sought. If Iraq is the requesting country, it is required by law that its penal law is applicable to the crime, e.g. Article 41 (c) of the Riyadh Convention.

Otherwise, the extradition shall be rejected because Iraqi authorities cannot do anything legal to the wanted person. In view thereof, the law of some foreign countries expressly require the applicability of the national penal law of the requesting country to the crime for which they seek extradition. Thus, according to Article 409 (1) (i) of the Criminal Procedure Code of Qatar, "*It is a prerequisite for the extradition of persons: – That the offence for which extradition is requested has been committed within the territory of the State requesting the extradition or if committed outside, … that the act is punishable under the laws of the requesting State*".

* * *

The region where contemporary Iraq is located was home to some of the earliest civilizations, mostly Sumer and Babylonia, which developed the first written law codes. Iraqis proudly refer to their country as the cradle of law. However, Iraq has been experiencing enormous difficulties over the last 20 years after its dictator, Saddam Hussein, was pushed out of power in 2003. Serious problems have been affecting its two formal criminal justice systems: the one in central Iraq (Baghdad) and the one in the factually independent Iraqi Kurdistan Region (Erbil). The process of updating local laws is slow and somewhat controversial. The Iraqi extradition law is no exception. Its improvement is necessary. The intensification of the movement of ordinary people and criminal offenders dictates the introduction of modern forms of extradition activities and adequate rules to efficiently regulate them. At the same time, despite the unsatisfactory legal framework for Iraqi extradition (both export and import), measures should be taken to facilitate extradition relations with the Iraqi authorities in the current conditions. Delays in the international efforts to fight crime may have no excuse.

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