# Deportation and Extradition from an International Perspective

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#### Abstract

Deportation and extradition have been one of the long-standing issues in international law. After proposing new human rights' issues in the development of international law and human role in international relations, sometimes the question of deportation and extradition is in conflict with European human rights concept. It should distinguish between extradition with similar concepts such as delivery, transfer and dismissal. The extradition is the process that reflects the country's international collaboration and cooperation in the implementation of more stringent standards of criminal justice. Its successful implementation requires the cooperation of different countries in extradition with no political and security excuses. European Court of Human Rights as a judicial organ of the European Convention on Human Rights has issued sentences in its practice regarding some of these conflicts. Researcher with knowledge of neglecting the debate in the Iranian legal system, insists to evaluate the performance of the Human Rights Committee and the European Court of Human Rights in relation to deportation and extradition and procedure that the European Court has dealt using analytical methods to review the extradition from different angles and it is hoped that open a step for progress in Iran's penal policy and the legal in the international arena.

Keywords: deportation, extradition, criminal, criminal justice, criminal law

#### 1. Introduction

Developing communications and the elimination of many obstacles has closed societies together far more than ever before. This affinity besides to the enormous benefits, also has caused some problems. Fast shipping and great facilities tourism exploited by a few offenders that have committed major crimes such as murder, armed robbery, kidnapping and escape before being arrested at the crime scene so no one can access them or commit a crime against the country's interests outside its jurisdiction and since that justice requires that defendants and offenders escaped in other countries do not feeling of comfort and security, in order to create international cooperation in the field of criminal penalties, the question of extradition and deportation of criminals has been proposed.

In the meantime, after the adoption of the European Convention on Human Rights, which guarantees the preservation and protection of human rights in the European Communities, some criminals who escaped to European countries, despite the extradition treaties, in some cases due to the prohibition of some penalties which the Convention knows them abuses of human rights, request the European Court of Human Rights to stop the extradition and deportation them to their country of origin where there is a risk of such penalties to them.

Accordingly, in terms of importance, the issue of human rights in today's world and the problems of violations of fundamental human rights generally by governments and strategies to deal with a clear violation of these rights, this article discusses the issue of deportation and extradition in European countries and the European Court of Human Rights regarding the protection of human rights against some implications of deportation and extradition that are in violation of the European Convention on Human Rights. Before the main topic of this article, "the extradition procedure in the European Convention on Human Rights with regard to the European Court of Human Rights to protect the rights enshrined in the Convention", whereas international law principles and rules governing deportation and extradition, which is accepted all over the world, it seems to primarily discuss a brief description of these principles and rules.

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### 2. Theoretical and Conceptual Framework

#### 2.1 Overview of Deportation and Extradition

Deportation and extradition subjects have fundamental differences, though there is not much difference in practice. That means that deportation basically refers to unilaterally act of the government that expels the foreign offender from their territory while the extradition as explained in the following sections, is a mutual action between the sender and the applicant countries, which means that the country seeking extradition request for the extradition of sending him to trial or be punished (Mowlayi, 2006, 123) and if there is an extradition treaty between the two countries, sender country is bound by treaty between two countries and the offender shall be refunded to the applicant's home country. Extradition is not an issue that to be the natural right of governments, but only done on the basis of bilateral or multilateral extradition treaties or on the basis of governments reciprocity. After this brief introduction, provided the literal and legal definitions of the terms deportation and extradition will be important to clarify the matter. Accordingly the deportation means eject out and in legal terminology, eject out of the country for reasons such as a criminal record, crime or illegal entry into the country and the lack of immigration documents or proof of nationality when officials recognize the presence of a person against the national interest called deportation. Deportation often happens to the country of origin that the person has its nationality (Kamminga et al., 2014).

In legal terminology, extradition is the recovery of an offender who fled from one country to another by the requesting government from the government that the offender has fled to. This is preceded by an agreement or contract between the two countries (Jafari Langroodi, 2005, 36).

In other words, extradition remands the accused or sentenced person that went outside of the crime scene territory after the crime and before the sentence or conviction (Validi, 2007, 175) or has done crime outside the territory of the State which has jurisdiction over the crime. In connection with the deportation and extradition of resources that government rely on it, it should be noted that since deportation is the government's unilateral action, is only subject to domestic laws and rules. Of course, these laws and government decisions may be affected by international common laws in this regard. Extradition includes:

- A) international treaties: the treaty is an agreement between two or more functions of international law. There are many international treaties on the extradition issue some of which include the 1929 Geneva Convention on the treatment of prisoners of war, the Convention on the Prevention and Punishment of Genocide adopted in 1948 by the United Nations General Assembly, 1957 European Convention on extradition between member states of the Council of Europe, Convention on Extradition 1995 to facilitate formalities, the 1996 Convention relating to extradition between member states of the European Union, which replaced the 1957 Convention.
- B) Domestic law: a government based on its rules, devotes orders to its domestic law extradition materials where offenses whose offenders are refundable and non-refundable listed and procedure, conditions and the extradition flow fully explained in details (Mirabbasi, 2010, 68). Unlike international treaties, domestic laws extradition is a one-way document that is invoked in the absence of a treaty (Ghazi Shariat Panahi, 2011, 22). Among these laws can be named Iran Extradition Act of 1339 and the extradition to France in 1927.
- C) The general legal principles: the principles outlined in Article 38 of the Statute of the International Court of Justice "under the general principles of law that are acceptable to the United Nations World". In this regard, principles such as the principle of sustainable government and the principle of restitution can be cited. Some of these principles approved in international conferences and meetings and the following example can be named: The principles of extradition in 1880 at the Institute of International Law at Oxford has been approved and regulated in 26 sentences, the decisions of the International Criminal Police Congress was formed in 1914 in Monaco, Congress judicial decisions which conclude a contract in 1914 Moscow International Extradition is recommended, International Congress to reform criminals decisions and principles of the Bureau of Prisons in 1927 (Ghazi Shariat Panahi, 2011, 23).
- D) international conventions that have a major role in the formation of international law and its long main body of data. International law is the second source which stated in Article 38 of the Statute of the International Court of Justice entitled: "International practice, because of a general practice accepted as a legal base".

It should also be noted that jurisdiction over crimes is determined on the basis of some propositions which differences is observed in these statements on the basis of domestic law. The first competence criterion is the land where the crime happened which known as territorial jurisdiction and governments can take do it on the control of criminal behavior in its territory and apply its criminal provisions to offenders. This principle, which is fully accepted by the international community (Bastoni and Grossman, 2012), focused on the sovereign territory

of the State on the territory of the competence and is among the most primitive forms of competence. Accordingly, any governmental jurisdiction over offenses will be committed in its territory. The next competence criterion is nationality that has been partially accepted in the legal systems (Ibid, 251). Based on the principle of citizenship, the government could own nationals who have committed offenses outside its territory, regardless of the impact of these crimes on the government, put on trial and punish (Karamzadeh, 2002, 73).

The latter is universal jurisdiction which based on it, every country is entitled to, or in some cases is bound to deal with serious human rights crimes, regardless of the crime scene location or nationality of the perpetrator or the victim (Kamminga, 2014, 941). All governments can follow the accused of committing in international crimes, including offenses committed against the international community. These crimes are mainly caused by the breach of an obligation towards the international community, general obligations that are according to the International Court of Justice in the case of Barcelona, all governments can keep the legal benefit to it. For example, few of these commitments are: knowing rape as illegal, action against slavery and the prohibition of genocide and... It should be noted that since instances of general obligations are constantly changing and evolving, crimes subject to universal jurisdiction are still on the rise.

## 2.2 What Distinguishes Extradition from the Concept of Surrender?

In legal texts, generally of two words «extradition» and «surrender» is used in the return and transfer of the requested person which sometimes the two terms are used interchangeably also because of the similarity in meaning. There is sometimes an attempt to distinguish in appearance, different intentions of the two terms to be withdrawn. Statute of the International Criminal Court is one of the documents that note the distinction between the two terms. According to Article 89 of the Statute of the Court, at the request of the defendant delivered to the Court, the country cannot request an exception to the principle of extradition is made on the basis of nationality, refrain from handing him, which has sometimes been inconsistent with the provisions of the constitution states that the impossibility of extradition of nationals to other countries (Mirmohammadsadeghi, 2004, 236).

Accordingly, the surrender term is simply used to deliver the criminals to international courts. Delivery of persons does not require a convention or extradition treaty, but for those governments that their rights are merely refundable allows individuals to stand trial in another country, extradition to an international tribunal would not need to be predicted, fulfill the obligations of persons handing over to international tribunals have become so problematic. Furthermore, the rules and even some basic laws of some countries, prohibits them to extradite its citizens to other countries. As a result, these countries could pass their international obligations in this field with regulations in basic laws (Yousefi and Rahimi, 2013, 528).

## 2.3 What Distinguishes Extradition from the Concept of Transfer?

One of the relatively new instrument of international criminal assistance, is the transfer of sentenced persons from sentencing country to contracts country. In this form of assistance, that contrary to its title refers only to the transfer of persons sentenced to penalties privative of freedom, person who committed a crime, was tried and convicted by the courts of a country, sentenced person transported to his own country to spent the prison period there. In the extradition of a person who has been convicted, but for some reason there is not present in a country, the country where the sentenced person is in possession of a country that has issued his sentence will be refunded (Khaleghi, 2008, 17).

Some lawyers, according to the Statute of the International Criminal Court and the Statute of the Tribunal for the former Yugoslavia (in Article 29) also preferred the "transfer" to the "surrender" but in any case, both terms (transfer and surrender) are used generally in a sense than the "extradition" have a sense of independence (Ardebili, 2008, 37).

#### 2.4 What Distinguishes the Extradition from the Concept of Deportation?

The definition of "Deportation" is said as "action in expelling a foreigner from a country, because he was in the country illegally or whose presence is detrimental to public order or to national security.

Generally extradition is different from deportation, although it may be both led to the transfer of a person from a country, but 'deportation' is a migration process. Extradition involves the surrender of a person from a country on charges of committing a criminal act in another country, while "deportation" generally applied to foreigners. In fact, the government dismissed the request to surrender the accused or sentenced person is different to deportation of bad people from the country. In extradition, the demanded person resides in the country of the demand where the applicant has committed a crime against the interests of the state or its citizens, while in the issue of "deportation", that person may simply ignore regulations relating to the validity of the visa and do not anything against public order. So deportation is when the right to reside in the country cancels. In terms of civil

rights, it is through the voluntary actions, but we must say that it is different with extradition (Elizabeth, 2013, 159).

## 3. Research Methodology

This thesis uses a descriptive-analytical research method. Data collection method is library method. The data collection tool is note taking.

#### 4. The Research Findings

## 4.1 Approach of the European Court of Human Rights

According to Article 3 of the European Convention on Human Rights "No one shall be subjected to torture and inhuman or degrading treatment or punishment". According to the jurisprudence of the Court, in cases where there are fundamental reasons that if the extradition of a person to a country where they risk torture and inhuman or degrading treatment or punishment encounters, article 3 of the Convention prohibits the extradition as an undeniable exception.

Unlike the approach of the Human Rights Committee that does not present the criteria for diagnosis of torture from other analogous behavior, Court distinguishes the torture and other forms of inhuman and degrading treatment in two ways:

- 1) Torture in comparison with other inhuman or degrading behaviors, leads to severe violent suffering and difficulties.
- 2) The suffering that inflicted on a person in torture is intentional. The Court defined torture as inhumane treatment that intentionally causes severe and cruel suffering.

The most important achievement of Court in relation to the prohibition of extradition on the basis of Article 3 of the Convention is attained by "Soering" case. He was a West German citizen accused of killing his family in Virginia State, and for this reason had fled to England. But on the basis of an extradition treaty between Britain and America, the British government accepted the extradition of the person which demanded by the American government and this led to a lawsuit that accused the European Court of Human Rights, alleging that his extradition to America is a violation of Article 3 of the Convention because he is at risk of cruel and inhumane treatment or punishment and the death penalty and will prisoned with sentenced to death prisoners.

After studies conducted, the Court announced that the British government was obliged to extradite him to America in accordance with Article 3 of the refrain, because serious and foreseeable risk of a violation of Article 3 as a result of extradition was granted.

Although the British government criticized the extradition of a person is not looking the responsibility of government to extradite in terms of behavior and inhuman punishments outside the competence, does not absolve the responsibility for all the results and foreseeable damage resulting from extradition, outside the territory.

Finally, the European Commission considered the expulsion of Soaring as a violation of Article 3 of the Convention (prohibition of torture). The Court confirms the Commission, arguing that the Home Office has rejected calls a threat to national security and stated that the prohibition contained in Article 3 of the Convention was absolute and under no circumstances cannot be deviated even when the risk of public emergency threatens the existence of the nation.

The Court emphasized in most of their votes to the fact that according to Article 3 of the Convention states' positive obligation or a commitment to action that avoid from all forms of violence and abuse against people this means that, not only should refrain from acts of violence against individuals, but should also provide effective measures to protect individuals against acts committed by both the government agencies and by private entities. This positive obligation requires that states not deliver that person to a country where they may be tortured. In addition, it should be ensured that to take adequate protection of the law against such behavior (Zamani, 2010, 34).

By the Court view, under international law and treaty obligations, Member States have the right to control the entrance and stay of the people in the country and expel them from the country, however, should consider Article 3 of the Convention in the exercise of this right and the expulsion of aliens from the country. Ejecting out a person from the country and certainly the threat of his extradition to a country where he will face torture and mistreatment by officials in the recipient country is contrary to Article 3 of the Convention. In such circumstances, Article 3 committed the states to not deport or extradite of persons (Zamani, 2010, 35).

Thus, it can safely be said that the prohibition of torture is absolute credit not under any circumstances take-off run. Even in the fight against terrorism, no country can torture, inhuman and degrading treatment and adultery punishment or retroactive criminal laws. For example, usually persons accused of terrorist activities persist to deny facts while being interrogated by the police or security agents and this can lead to coercion or torture them. It is even possible under the prevention of future acts of terrorism through the information about the arrested criminals seems to find moral justification (disposal worse with bad). There is no doubt that the absolute prohibition of torture, inhuman or degrading treatment or punishment, even in the process of crushing the previous fight terrorism, imminent or future also remains valid. As shortly after the terrorist attacks of September 11, 2001, the United Nations Committee against Torture has pointed out that Security Council Resolution 1372 that prescribe the need to combat the threat of terrorist acts have been provided with all the equipment and facilities, should be highlighted in the light of the prohibition of torture (Zamani, 2010, 36).

4.2 Failure to Comply with the Rights of the Accused Defense in the Courts of the Extradition Applicant Country

In extradition, the two sides discussed the issue of fair trial. On the one hand, the general principles of international law provide that extradition shall be subject to adequate procedural guarantees in the applicant's home country. On the other hand, the requested State should be able to establish that the decision to extradite the person to the applicant's home country, he will not at risk of violating the right to a fair trial.

Accused because of behavior that has committed, soon likely to be tried after delivery. In the course of these proceedings, the accused has of some of the rights which respect to them is required in court. For example, a defendant has the right to benefit free interpreter services if he does not understand the language used by the court or fails to speak the language. Of course, the right not only to oral statements made in court, but the accused has the right to access the translated text documents and evidence presented against him in court, but this did not go far that all official documents related to the hearing of evidence and the accused be placed, but the right to use an interpreter or translation of documents should be to an extent that informed the defendant of his charges and defend himself in court and express his reasons (Zamani, 2010, 36).

The right of accused to access to a lawyer in the initial stages of arrest before police interrogation is one of the major manifestations of the right to a fair trial. Although this right not expressly included the European Convention on Human Rights and Covenant on Civil and Political Rights but the European Court of Human Rights, emphasized the accused "Abdullah Ocalan" right to have an attorney during his detention in a lawsuit against the government of Turkey and announced that the trial court regardless of the defendant's right to act, is not competent and impartial court and imperfect provisions of the Convention in fair trials. So by the Court, the death penalty is sought as a result of unfair trials have been duly convicted and cannot be consistent with strict standards that is essential to be observed in death penalty cases (Mirabbasi, 2010, 105).

It should be noted that infringement of the accused to a fair trial and the administration of criminal justice in the country seeking extradition, be accepted when the defendant can prove with evidence that there is a real risk of violation of his rights in the country and as a result, the chance to protest the proceedings will not be conducted (Mirmohammadsadeghi, 2004, 98).

However, as a legal matter, the Committee requested actions based on the rules of procedure considered merely a non-binding recommendation, however, good results have been complying with such requests. In order to maintain the causative reason of actions, the Committee anticipated that member governments suspend the extradition process until the committee announced its interim measures (Mirabbasi, 2010, 106).

Recently, a similar change occurred in Europe, which is an obvious example, is the issue of extradition of Uzbek opposition to the country, despite the interim measures prescribed by the European Court of Human Rights.

In this case, the Court declared that any State Party which he requested interim measures must respect and refrain of any action or omission that led to the weakening of power or influence to the final decision.

Although Plaintiffs claim that the risk of violation of their right to a fair trial under Article 1 of Article 6 of the Convention was not accepted, and Branch Supreme Court declared that the right of individuals to a fair trial was not violated in Uzbekistan and during a fair trial were sentenced to imprisonment, however, the Court stated that the Turkish government violates its commitments under the Convention for not doing temporary measures and the extradition of suspects to Uzbekistan.

If a fugitive accused in criminal proceedings, the minimum guarantees related to a fair adjudication are not possessed, extradition request should not be accepted. In fact, when the country requesting the defendant to practices the trial inconsistent with human rights standards, a defendant's right to a fair hearing is expressly violated.

So, when the extradition request is based on the applicant's extradition trial in absentia in the country, most extradition treaties prohibited the extradition of the accused in such circumstances and requested governments often accept the demand of the extradition, just in terms of the person sought to be tried again in a new trial (Mirmohammadsadeghi, 2003, 156).

The European Court of Human Rights, failing to justice about accused, when ascertains that person who has been convicted in absentia during a hearing, later, not be able to appeal the verdict and a meeting with his presence and his remarks will issue a new sentence after hearing his defends, while clearly not been proven that the accused has canceled the right of appeal and his defense. So if there are fundamental reasons that the accused will not be tried again in that country, the extradition of a person in accordance with Article 6 of the European Convention on Human Rights will be violated to the right to a fair trial and the administration of criminal justice. The European Court of Human Rights, prohibits Member States charged as a result of cooperation with countries that refuse to condemn justice.

Finally, the Court considers the conviction of Abdullah Öcalan to the death penalty after an unfair trial in a court was in violation with article 6 of the Convention.

According to the above, currently under any circumstances there is the possibility that the accused applicant's right to a fair trial in the country of violated the extradition.

In order to prevent such violations, some provisions have been thought by international human rights of the Human Rights Committee and the European Court of Human Rights.

For example, when the Human Rights Committee detects that as the result of the defendant's extradition or deportation of a country, he will be at risk of violations of the right to a fair trial in the receiving State, according to Article 86 of the rules governing procedural, has the authority that before declaring his opinion, inform his theories about the State party interim measures to avoid irreparable damage to the victim of the alleged violation. The purpose of these actions is clearly support and prevent irreparable damage to the victim.

## 4.3 The Influence of the European Convention on Human Rights on the Deportation and Extradition

In this section, some articles of the European Convention on Human Rights which are cited in the European Court of Human Rights procedure for lack of deportation and extradition is checked. These articles, which are achieved from the cases in the European Court of Human Rights with regard to the basis articles for the non-deportation or extradition, will vary according to the European Court of Human Rights performance. And is not too far-fetched as time goes on and expand desire of the international community to put human rights, other articles concerning the sentence of non-deportation or non- extradition invoked. So now, the European Court of Human Rights, accused or criminals to commit crimes that in case of deportation or extradition to countries subject to the applicant in violation of the rights enshrined in Articles 2, "Right to Life", 3 "Prevention of Torture" 5 "right to liberty and security" 8 "right to respect for privacy and family life" and 13 "right to an effective remedy" the European Convention on Human rights supports them against the violation of the rights recognized by the Convention. However, with the description below to review the cases and Court procedures associated with lack of deportation and extradition to protect these rights:

## 4.4 Non-extradition and Deportation by Virtue of Article two of the Convention

Article 2 of the European Convention on Human Rights protects every person's right to life. The first paragraph of this article contains an exception to that rule is legal execution following a court order. The second paragraph of this Article does not know the deaths due to self or else defense, suspects or fugitives, suppressing insurrection or rebellion to a value that is essential to a violation of Article 2. Of course in relation to the legal execution by court order, protocols 6 and 13 have applied more restrictions in those countries that have signed these protocols. No. 6 additional protocol to the European Convention on Human Rights adopted by the Council of Europe on 28 April 1983 and which is about the abolition of the death penalty does not run except in time of war and even at the time of imminent danger of war. On this basis, in the year 2002 the no. 13 protocol to the European Convention on human rights was approved to absolutely canceled the death penalty in all circumstances.

So with regard to being later of the adoption of protocol no. 13, theorems exports in the European Court of human rights under article 2 of protocol no. 13, it can be presumed that protocol no. 6 actually be absolutely deemed and due to the comprehensiveness of Protocol No. 13, the judgment of the Court do not cite to protocol no. 6. However, the protocol will be in force to countries that have not ratified protocol no. 13.

#### 5. Conclusions

Thus, it can be concluded that extradition treaties and respect for international treaties to crack down on international criminals, is an effective step that develops the governments' friendly relations and would enjoy the security and peace of the community. Establishment of the International Criminal Police "Interpol" is one of the basic measures of cooperation between responsible governments to create a major role in the fight against international criminals.

Undoubtedly, in the current era is past time for governments to invoke the rule, limit themselves to its land and territory and be indifferent to the issues and problems that happen in the world. The country's security is abroad and countries inevitably drawn to cooperate with other countries in order to maintain security and order.

Against criminals who act against peace and international security or to harm the interests of countries and ignored human rights, the need for cooperation and mutual concordance of all governments is inevitable. Collaborating between the countries began with the establishment of international organizations such as the "Community of Nations", the UN and other organizations, such as the International Criminal Police Organization (Interpol) and rules and laws enacted to maintain international order and security and world peace and to punish international criminals.

To develop friendly relations and all-round struggle, bilateral and multilateral international agreements were set. The existence of international organizations leads to narrow the broad sense of the rule that implement the governments' intentions without regard and respect for the interests of other countries. Thus, internationalization of all legal, political, cultural and social phenomena is a feature of the present century and the total international community plans, scholars of criminal law comments, legislation and international agreements led to the creation of a new law which was named international criminal law and the issue of extradition will be studied in this field.

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