ON THE ISSUE OF EXTRADITION OF PERSONS WANTED FOR THE CRIME GENOCIDE

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Abstract *- Genocide is a crime against the international community as a whole and each member of the international community has an inherent interest and responsibility to ensure that those who have committed such a crime do not evade justice. At the same time, extradition and surrender of a person must be consistent with the norms of international law and human rights. The state that has detained the person must have a legal basis for doing so, and the detained person must be able to challenge the grounds for deprivation of liberty when the question of surrender is considered.*

Despite the existence of detailed legal regulation of the international legal institution of extradition, in practice there are major problems regarding the extradition of political refugees, their own citizens, extradition at the request of two states, as well as the application of grounds for refusing extradition. Using the example of unsuccessful cases of extradition of suspects in the Rwandan genocide from European countries to Rwanda, recommendations are offered for improving the current legal acts and the activities of competent state authorities.

Keywords*: genocide, crime, extradition, prevention, investigation, punishment.*

INTRODUCTION

In the modern period, genocide, crimes against humanity and war crimes, being the most serious crimes, cause serious concern to the international community. These crimes, brutal in nature, can have a long-term destabilizing effect in a given region for decades after their commission. At present, the international community firmly holds the position that the prevention, investigation and prosecution of these crimes play a central role in the fight against impunity of the perpetrators and the eradication of doubts about the possibility of establishing an international legal order based on universal values.

In order to ensure effective prosecution of the crime of genocide, the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 specifically addresses the issue of extradition. According to Brownlie, due to the profusion of extradition treaties, it is possible to speak of an international law of extradition, a term which does not imply the existence of custom, but of a significant corpus of conventional law exhibiting certain common elements[1]. In modern international legal literature, extradition is generally defined as "a coercible transfer of a person from one jurisdiction to another at the request of the latter, through a specified procedure and provided that certain conditions are satisfied, for the purpose of carrying out a criminal procedure or enforcing a penalty"[2]. In a more specific form, extradition is understood as a set of criminal procedural actions aimed at the search, detention, placement in custody and transfer of a person to a foreign state or to the bodies and institutions of international justice (an international tribunal, the International Criminal Court) on the basis and in the manner established by international treaties and national legislation, or on the basis of the principle of reciprocity for the

[1]James R Crawford, 'Brownlie's Principles of Public International Law' (8 edn., Oxford University Press 2012) 483.

[2]de Almeida Costa M. J., 'Extradition law: reviewing grounds for refusal from the classic paradigm to mutual recognition and beyond' 4 (Doctoral Thesis, Maastricht University 2019).

purpose of carrying out criminal prosecution, administering justice or enforcing a court sentence that has entered into force.

In the modern period, there are 3 main models of extradition: European, Anglo-American and mixed. In the European model, the extradition procedure is of an administrative nature - the extradition request is considered by the Ministry of Foreign Affairs from the point of view of its compliance with the concluded international agreements, and then goes to the Ministry of Justice (the prosecutor'dfs office) for a legal opinion.

The Anglo-American model, on the contrary, provides for mandatory judicial consideration of the issue of extradition of the requested person. In this case, extradition is possible only on the basis of the court's examination of the sufficiency of the grounds and the irrefutability of the evidence incriminating the person in the commission of the crime.

Finally, the mixed model of extradition assumes that the received request is first considered in the courts. A negative decision of the courts is binding on the competent authority (the Ministry of Justice): it is obliged to reject the request. At the same time, a positive decision of the court is not binding on the executive branch: it is advisory in nature. This model does not require the presentation of evidence of the guilt of the requested person, but he is allowed to present evidence in favor of his innocence.

1. Problems the extradition in the practice of states

The obligation to cooperate in the extradition of persons suspected of genocide is specifically enshrined in Article VII of the 1948 Convention, which allows extradition only in accordance with applicable laws and treaties. Paragraph "b" of Article 102 of Rome Statute of the International Criminal Court defines extradition as "the delivery of a person by one State to another State in accordance with the provisions of international treaties or national legislation". In other words, it provides a very broad definition of this institution (process). This definition is broader than the definition of extradition formulated back in 1902 in the famous US Supreme Court case "Terlinden v. Ames" as "the surrender by one State to another of a person accused of or convicted of a crime outside its territory and within the territorial jurisdiction of another State which is competent to try and punish him"[3]. Unfortunately, in the modern period, in the practice of states there are cases of interpreting extradition in an even narrower sense and thus creating various delays, using which criminals who have committed such grave international crimes as genocide, war crimes, crimes against humanity remain unpunished.

Meanwhile, countries are obliged to prosecute persons suspected of genocide and other international crimes in their own courts, extradite them to a state willing to prosecute them, or hand them over to an international criminal tribunal with universal jurisdiction over the crimes in question.

In recent decades, much attention has been paid in the international press to the forced detention of persons accused of committing war crimes in Bosnia by special units for transfer to the International Criminal Tribunal in the former Yugoslavia (ICTY). At the same time, less widely publicized were the routine arrests by national police of persons accused of genocide, followed by extradition to another country or to international tribunals. Thus, unlike the ICTY, all suspects transferred to the International Criminal Tribunal for Rwanda (ICTR) were arrested by national police agencies.

However, many extradition requests during that period were not satisfied by the relevant authorities of the requested countries, which brought up the issue of revising some provisions of the international legal institution of extradition. Unfortunately, even today there are cases where the corresponding requests for extradition or surrender of persons are often delayed or rejected by the receiving country for various reasons: differences in the rules of evidence, different justice

[3] U.S. Supreme Court. Terlinden v. Ames, 184 U.S. 270 (1902).

systems, the existence of the death penalty in the requested country, the absence of a bilateral extradition treaty, constitutional prohibitions on the extradition of their citizens, political disagreements, etc.

Thus, on February 15, 2000, former Rwandan deputy commander of the Rebirth Battalion Innocent Sagahutu was arrested in Denmark on charges of participating in the genocide, mass rape and murder of 10 Belgian UN soldiers in Rwanda in 1994. The extradition case against Sagahutu was briefly suspended after his lawyer Thomas Roordam stated that he suffered from a serious illness. However, a Danish court later ruled that his health problems were not life-threatening, the Ministry of Justice confirmed that his extradition would not violate Danish law and he was handed over to the International Criminal Tribunal for Rwanda (ICTR) on 24 November 2000[4].

Difficulties in extraditing criminals in genocide cases have continued since this case. In 2007, Rwanda issued 25 extradition requests to 10 different European countries, including France, the UK, Sweden, Finland, Belgium, Norway, Denmark, Germany, Italy and the Netherlands. Despite this large number of extradition requests, only the French and English courts promptly processed extradition requests from Rwanda[5].

It is also interesting that when the perpetrators of the Rwandan genocide were brought to justice, relatives and friends of the victims of the genocide were mostly in favour of extraditing the suspects to Rwanda, despite the imperfections of the Rwandan justice system, so that the criminals could return to Rwanda and face their victims. This position was justified by the argument that this would help restore the survivors' faith in justice. Thus, the victims interviewed in 2008 by the organization "REDRESS & African Rights" were most disappointed by the fact that 14 years after the genocide, not a single country had extradited the genocide suspects to Rwanda, citing the absence of an extradition treaty or other formal obstacles[6]. As a result, only Belgium and Switzerland applied their domestic legislation to prosecute the perpetrators of the Rwandan genocide within the framework of their national proceedings. In the criminal legislation of those countries where such elements of the crime do not exist, the perpetrators manage to escape responsibility. Only Norway, which at one time failed to prosecute a suspect in the Rwandan genocide, has adopted special legislation with retroactive effect so that those accused of genocide living in Norway can no longer go unpunished[7].

The excessive bureaucracy of the European extradition structures can also be clearly demonstrated by the example of the consideration of the extradition request of Claver Kamana, sent by the Rwandan government to France on October 3, 2007[8].

On February 26, 2008, French police arrested Claver Kamana in Annecy on the basis of an international arrest warrant issued by the National Prosecutor's Office of Rwanda on August 28, 2007 for his alleged role in the 1994 genocide. Kamana had lived in France since 1999, but his application for asylum was rejected. The Investigative Chamber of the Court of Chambéry, which has jurisdiction in Annecy, examined the extradition case on 5 March 2008 and on 2 April 2008 the court issued a decision approving the extradition of Claver Kamana to Rwanda for the crimes of genocide, complicity in genocide, conspiracy to commit genocide and crimes against humanity (murder and extermination).

[4]Prevent Genocide International. Extradition and transfer of persons suspected of genocide and other international crimes (30 June 2001), http://www.preventgenocide.org/punish/extradition/#:~:text=Countries%20have%20a%20duty%20to,with%20jurisdiction%20over%20these%20crimes.

[5]REDRESS & African Rights, Extraditing Genocide Suspects From Europe to Rwanda. Issues and Challenges Report of a Conference Organised by REDRESS and African Rights at the Belgian Parliament (1 July 2008), 4.

[6]Ibid, 40.

[7]Ibid, 40.

[8]Ibid, 20.

The 17 page decision was based on an assessment of the international arrest warrant issued by Rwanda, which included, among other things, a brief description of the crimes and Kamana's personal responsibility for them. The indictment sent by Rwanda also contained laws and guarantees regarding the abolition of the death penalty, prison conditions and a fair trial. The court did not go into all the details of the evidence of the crimes allegedly committed by Kamana in reaching its decision and based its assessment of the conditions for a fair trial in Rwanda on the assurances and legislation provided by Rwanda.

However, this decision was overturned on 9 July 2008 by the French Court of Cassation, which held that the Chambery Court of Appeal had not given due consideration to the concerns raised by the prosecution. In particular, the Court of Cassation held that the Chambery Court of Appeal had not considered whether the accused would (in practice) receive a fair trial and the fundamental rights guaranteed by law and therefore had no legal basis for approving his extradition and, therefore, the Court of Cassation remitted the case to the Lyon Court of Appeal for consideration and decision on extradition[9].

In this regard, it should be noted that an extradition request does not necessarily have to include substantial evidence of the suspect's guilt. A clear description of the facts allegedly committed by the requested person, together with a copy of the relevant national law establishing the offence(s), is usually sufficient to satisfy the formal requirements for extradition. The prosecution then submits the request to the courts, which determine the identity of the requested person, the admissibility of the request and the possibility of granting the request, including the legal basis[10].

States may examine the evidence presented against the requested person if there is no bilateral or multilateral treaty. In Finland, for example, the requested person has the right to request an opinion from the Supreme Court to review the lawfulness of the extradition request, which includes an assessment of the evidence presented by the requesting state. Similar procedures apply in Sweden. The evidence presented does not necessarily have to prove the guilt of the suspect beyond reasonable doubt, but must be sufficient to justify a prosecution[11].

Once the court has approved extradition, the executive, usually the Minister of Justice (in the United Kingdom the Secretary of State), decides whether to extradite the person. In a number of countries, including Belgium, Germany, the Netherlands, France and the United States, this decision of the executive officer can also be appealed administratively[12]. Thus, the United States does not support the extradition of political criminals, but its position does not contradict the provisions of the Extradition Convention. Of course, genocide, in essence, mass extermination, should not be considered a political crime for extradition. No political activity can justify this crime, as defined in the 1948 Convention. Moreover, American procedures prevent the extradition of any person against whom a foreign government has brought trumped-up charges of genocide. Procedural guarantees for pre-extradition detention in the United States are similar to those required for a regular preliminary examination of the issue of detention.

As for the extradition of American citizens for committing a crime abroad, this does not present any difficulties for the American authorities. The United States has long been a leader in promoting mutual extradition of citizens and does not even object to the extradition of American citizens from one foreign state to another. Meanwhile, in the modern period, the provisions of the European Convention of 1957 are more conservative in this matter. Thus, according to paragraph "a" of

[9]Ibid, 20.

[10]Extradition European Standards: Explanatory notes on the Council of Europe convention and protocols and minimum standards protecting persons subject to transnational criminal proceedings. Council of Europe Publishing (December 2006) 28.

[11]REDRESS & African Rights, Extraditing Genocide Suspects From Europe to Rwanda. Issues and Challenges Report of a Conference Organized by REDRESS and African Rights at the Belgian Parliament (1 July 2008),21.

[12]Ibid, 21-22.

Article 6 of this Convention, “A Contracting Party has the right to refuse extradition of its citizens”. We believe that this provision of the European Convention, adopted in the middle of the 20th century, is very outdated, does not meet the requirements of the time, hinders the effective operation of international judicial bodies of universal competence, and opens up opportunities for the establishment of impunity with respect to a certain category of persons. In this sense, taking into account the practice of the United States and other advanced countries, we propose a revision of the provision of Article 6 of the said Convention. We consider it appropriate, in the context of ensuring the inevitability of liability for the commission of serious crimes, to supplement Article 6 of the 1957 European Convention with a Protocol of two provisions in the following wording:

1. A Contracting Party has the right to refuse to extradite its nationals, provided that, on the basis of the evidence presented, appropriate criminal prosecution has been instituted against these persons within the framework of domestic judicial mechanisms;

2. A Contracting Party does not have the right to refuse to extradite its nationals if the extradition is carried out on the basis of a warrant from an international criminal tribunal on charges of committing serious international crimes.

The Genocide Convention is the world's first attempt to put an end to the planned destruction of human groups defined in it. Like treaties for the suppression of piracy and the slave trade in this sense, it defines an international crime and obliges signatory countries to detain and punish criminals. The Convention differed from them in that it provided for certain measures to ensure respect for rights and provided for the future establishment of a universal criminal court with original jurisdiction over the crime.

By providing for the possible jurisdiction of an international court over individuals in peacetime, the 1948 Genocide Convention introduced a completely new concept of international law.

In this regard, we believe it is important to establish effective international extradition procedures (especially with respect to requests from international criminal tribunals), since in reality, ensuring the administration of justice for such serious international crimes as the commission of genocide, war crimes and crimes against humanity against high-ranking state and military officials in the state itself within the framework of its internal procedures is very often associated with great difficulties (for example, due to the influence of nationalist forces).

The extradition process, being a complex international legal institution, for its implementation presupposes not only the collection of the necessary evidence for implementation, but also the accumulation and processing of information on the location of the accused themselves, which sometimes forces states to take extraordinary steps. Thus, on January 9, 2001, the United States offered a reward of up to $5 million for information on 13 fugitive Rwandans indicted by an international tribunal for the 1994 Rwandan genocide. The reward was intended for information leading to the transfer of any of the fugitives to the International Criminal Court for Rwanda in the Tanzanian city of Arusha. Similar rewards were once promised for information on suspected war criminals in the Balkans and international terrorists.

2. Interpol's activities in extraditing international criminals

Interpol is an inter-governmental organization with the vision of connecting police for a safer world[13]. Arrests in genocide cases are also facilitated by the assistance of Interpol, which in 2007 established a special “Rwanda Genocide Fugitives Project” designed to facilitate arrests by coordinating the activities of the Rwandan authorities and national investigative agencies of the countries where the suspects in the genocide reside. Close cooperation between Interpol and the Rwandan, American and French authorities led to the arrest of Isaac Kamali in 2007. On June 23, 2007, Kamali travelled from France to the United States with a valid French passport and

[13]REDRESS & African Rights, Extraditing Genocide Suspects From Europe to Rwanda. Issues and Challenges Report of a Conference Organized by REDRESS and African Rights at the Belgian Parliament (1 July 2008) 23.

immigration authorities checked him against the Interpol database of internationally wanted persons. Since he was the subject of a Red Notice issued by Interpol, the US authorities sent him back to France, where he was arrested by the French authorities based on information provided by Rwanda and the Interpol Fugitive Investigation Support Unit. His arrest marked the beginning of a series of arrests of genocide suspects who had previously lived with impunity in France[14].

Close cooperation between European police officers is also justified, as the Rwandan genocide cases share a number of common features and are often closely linked. One example is the arrest of Silvere Ahorugese in Sweden on 16 July 2008. He had previously been arrested by Danish authorities, who had conducted a thorough investigation against him, but were then forced to release him due to insufficient evidence to prosecute. In addition to close cooperation with the Rwandan authorities to prepare additional materials, the information gathered by the Danish authorities was crucial for the Swedish authorities to respond adequately and promptly to the extradition request made by Rwanda. Thus, timely exchange of information on criminal cases being handled by the requesting country can save time and resources, regardless of the potentially different legal requirements for investigation and prosecution in the different national legal orders[15].

The example of the unsuccessful extraditions of Rwandan genocide suspects from Europe to Rwanda highlights the importance of promptly complying with requests for cooperation from their European counterparts in the future. This is particularly relevant given the lack of bilateral extradition treaties with most countries, which in turn often requires an assessment of the evidence provided by the authorities of the requested country in support of the extradition request. Thus, according to a report prepared by the organization "REDRESS and African Rights" based on a survey of relevant national authorities and lawyers in Europe, a faster response to Rwanda's information requests would have significantly accelerated the extradition of specific individuals in Rwandan genocide cases.

The example of Rwanda shows how the lack of an extradition treaty is an insurmountable obstacle to extradition from countries where extradition is dependent on the existence of a bilateral or multilateral treaty (for example, Belgium and the Netherlands, which are known to have a significant number of suspects of genocide). In such cases, the only way to achieve justice is to bring the persons to criminal responsibility before the national courts of these countries on the basis of universal jurisdiction or extradite them to another country willing to prosecute them, with which they have an extradition treaty[16].

Along with studying the experience of executing requests for extradition of persons accused of committing genocide, it is also worth considering cases of arrest and extradition of persons on the basis of an Interpol "red notice" against the perpetrators of the genocide in Serebrinica. Thus, on June 11, 2008, near Belgrade, Serbian police arrested the former commander of the Bosnian Serbs, 56-year-old Stojan Zupljanin. Back in 1999, Zupljanin was charged with genocide, but later this charge was changed to war crimes and crimes against humanity[17].

He was convicted by the UN International Criminal Tribunal for the former Yugoslavia (ICTY) of committing crimes against humanity while running prisoner of war camps in Bosnia and Herzegovina

[14]Ibid, 23.

[15]Interpol's contribution to the elaboration of a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes (October, 2021) 3.

[16]REDRESS & African Rights, Extraditing Genocide Suspects From Europe to Rwanda. Issues and Challenges Report of a Conference Organized by REDRESS and African Rights at the Belgian Parliament (1 July 2008),12.

[17]Interpol, Serbian police arrest war crimes fugitive subject of INTERPOL Red Notice, (12 June 2008). https://www.interpol.int/ar/1/1/2008/Serbian-police-arrest-war-crimes-fugitive-subject-of-Interpol-Red-Notice

during the 1992-1995 civil war[18]. Although S.Zupljanin had used a false name prior to his arrest, he was identified through DNA comparison. The initial photo and fingerprint comparison was conducted by Interpol following a thorough exchange of communications and identification material between its Fugitive Investigation Support Section (FIS) at the organisation's General Secretariat in Lyon (France) and its National Central Bureaus in Belgrade and Sarajevo, with the support of Interpol's Command and Coordination Centre. S.Zupljanin's arrest proved that fugitive suspects of serious international crimes are always within the reach of the rule of law, and marked another important step towards ensuring that those responsible for war crimes cannot escape accountability for their actions. S.Zupljanin's apprehension was the result of close cooperation between international criminal tribunals, the Interpol Fugitive Unit and NCBs around the world. During 2007, four individuals wanted by the International Criminal Tribunal for Rwanda in connection with the Rwandan genocide were also taken into custody thanks to the active support of Interpol. Of even greater impact was the arrest by Serbian authorities of Radovan Karadzic, wanted by the UN tribunal on charges including genocide and who was also the subject of an Interpol Red Notice, earning praise from the world's largest police organization. R.Karadzic, a former Bosnian Serb political leader who had been on the run for nearly 13 years, faced multiple charges brought by the ICTY. Karadzic was convicted of genocide in the area of Srebrenica in 1995[19]. The arrest of Karadzic, which took place just a few weeks after the arrest of Bosnian Serb commander Stojan Zupljanin, demonstrated that in today's reality, anyone wanted in connection with these serious international crimes will no longer be able to evade justice.

However, it is also worth noting certain omissions, unsuccessful examples of Interpol's refusal to extradite persons who have committed serious crimes. Thus, at the request of the government of the Republic of Azerbaijan, Interpol put on the international wanted list the ardent nationalist, ideologist of Armenian terrorism Zori Balayan, who in his work "Revival of Our Spirit", published in 1996, justified the Khojaly genocide. Z.Balayan proudly listed in his work the facts of the genocide committed by Armenians in Khojaly against Azerbaijanis and noted that every Armenian should be proud of this act.

Zori Balayan was one of the organizers of the terrorist act on July 3, 1994, when 13 people were killed and 42 wounded as a result of sabotage in the Baku metro. During the investigation of this case in 1998, one of the accused, Azer Aslanov, a militant of the Lezgin separatist organization "Sadval", who had undergone sabotage and terrorist training at the base of the Armenian special services, directly indicated that he received the order to carry out this terrorist act from Z.Balayan during his stay in Armenian captivity, and that the Armenian side held his mother hostage before he committed this terrorist act. After this, a special court ruling was issued against Zori Balayan, and in 1999, based on the submission of the Prosecutor General's Office of the Republic of Azerbaijan, Interpol put Z.Balayan on the international wanted list as an especially dangerous criminal. However, the international search warrant for Z.Balayan was soon cancelled at the request of Armenia, which regarded the Interpol ruling as "of a political nature".

In 2005, while sailing around Europe on the sailboat "Kilikia," he was arrested in the port of Brindisi (Italy) by Interpol at the request of the Republic of Azerbaijan. However, Zori Balayan was released later after the appeal to Interpol by the Ministry of Foreign Affairs of Armenia.

It should be noted that later Zori Balayan himself, expressing indignation at the fact that, having been put on the wanted list, he was, in fact, "barred from leaving the country", admitted that he had contacts with the terrorists arrested in Baku and even mentioned one of them in his book. Thus, despite the presence of sufficient evidence regarding Zori Balayan's involvement in the commission of serious criminal offenses, the Interpol leadership did not fully fulfill its mission to

[18]Interpol, Serbian police arrest war crimes fugitive subject of INTERPOL Red Notice, (12 June 2008). https://www.interpol.int/ar/1/1/2008/Serbian-police-arrest-war-crimes-fugitive-subject-of-INTERPOL-Red-Notice

[19]Human Rights Watch, World Report 2017. Seven Stories Press, 2016, 135.

arrest and extradite him. According to the Armenian agency "Snark", Interpol Secretary General Roland Nobel stated then that the decision to refuse extradition "with respect to Zori Balayan was made taking into account the fact that his search was of a political nature, which contradicts Article 3 of the Interpol Charter"[20].

However, despite this, the law enforcement agencies of the Republic of Azerbaijan continue their activities to capture and bring to justice the participants in the Khojaly genocide of 1992. Thus, on November 23, 2020, the Republic of Azerbaijan put one of the executioners of the residents of Khojaly, former Minister of Defense of the Republic of Armenia Seyran Ohanyan, on the international wanted list. A criminal case was initiated against him under Article 103 (genocide) of the Criminal Code of the Republic of Azerbaijan. By the decision of the Baku Military Court, a preventive measure in the form of arrest in absentia was chosen against S.Ohanyan and he was put on the international wanted list. Of course, it would be naive that, at the request of the Republic of Azerbaijan, Armenia would simply extradite him through Interpol structures, but S.Ohanyan, as a war criminal, will no longer be able to move freely throughout the territory of third countries. The heads of the relevant authorities of these countries will in any case be forced to detain S.Ohanyan and conduct an investigation into his activities and decide on his extradition.

Today, Interpol's Fugitive Investigation Support Unit at the General Secretariat in Lyon maintains close liaison with its network of specialized investigators, the National Central Bureaux, and especially the ICC, in exchanging information and intelligence regarding the possible whereabouts of fugitives wanted for genocide, war crimes and crimes against humanity.

In the Resolution "Increased ICPO-Interpol support for the investigation and prosecution of genocide, war crimes and crimes against humanity" of 8 October 2004, the Interpol General Assembly recommended that, within the framework of national and international law, Interpol member countries cooperate with each other and with international organizations, international criminal tribunals and non-governmental organizations, to combine their efforts to prevent genocide, war crimes and crimes against humanity and to investigate and bring to justice those suspected of having committed such crimes[21].

In the modern period, Interpol's role in the area of serious international crimes is clearly defined in its agreements with international courts and tribunals. This mission has been further strengthened by resolutions adopted by its governing bodies and UN bodies. In this regard, special mention should be made of five resolutions of the Interpol General Assembly concerning its cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone and the International Criminal Court - AGN/63/RES/9 (1994), AGN/66/RES/10 (1997), AG-2003-RES-08 (2003), AG-2004-RES-16 (2004) and AG-2009-RES-10 (2009). The importance of the following resolutions and recommendations on improving the activities of Interpol, adopted within the framework of its international and regional conferences, should also be noted: on strengthening support for the investigation and prosecution of genocide, war crimes and crimes against humanity (73rd Session of the Interpol General Assembly, 2004); on providing the necessary assistance for the arrest of the remaining fugitives wanted by the International Criminal Tribunal for Rwanda (19th African Regional Conference, 2007); on providing the widest possible assistance from the National Central Bureaux in the search and arrest of the four remaining fugitives wanted by the International Criminal Tribunal for the former Yugoslavia (37th European Regional Conference, 2008); on the establishment of a central repository to facilitate the exchange of information related to serious international crimes investigations worldwide (4th International Meeting of Experts on Genocide, War Crimes and Crimes against Humanity, 2009); on improving the handling of new requests for Red Notices related to

[20]Зорий Балаян больше не числится в списках Интерпола (2001), https://archives.echo.az/?p=3100

[21]Resolution "Increased ICPO-Interpol support for the investigation and prosecution of genocide, war crimes and crimes against humanity" of the Interpol General Assembly (8 October 2004), AG-2004-RES-17

genocide, crimes against humanity and war crimes (79th session of the Interpol General Assembly, 2010).

Interpol is today in a unique position to lead and strengthen ongoing efforts to facilitate national law enforcement agencies, the International Criminal Tribunal for the Fight against Genocide and Other Serious Crimes. The Interpol General Assembly has adopted several resolutions enhancing the authority of the Organization to support member countries and partner organizations in the prevention, investigation and prosecution of genocide, war crimes and crimes against humanity. To improve Interpol's response to these serious international crimes, a special unit was created in 2014 to focus on war crimes, genocide and crimes against humanity. Currently, Interpol also carries out a number of activities to provide strategic operational and investigative support, as well as to strengthen coordination and cooperation between the authorities of the relevant stakeholders. Among them, first of all, it is necessary to note operational support. Interpol provides operational support to international criminal tribunals and justice authorities of the organization's member countries, facilitates access to its data. Of particular value to national law enforcement agencies is Interpol's assistance, technical tools, resources and expertise in the field of solving serious international crimes, as well as the exchange of information and coordination of investigations of serious international crimes. Investigation of war crimes, genocide and crimes against humanity requires specialized training and knowledge. And Interpol today plays a key role in expanding the capabilities of member state investigators to investigate these serious international crimes, including collecting and processing evidence related to mass atrocities, in particular, expanding resources for the investigation and prosecution of cases of sexual and gender-based violence.

An important area of Interpol's activity is also building partnerships, within the framework of which the organization seeks to develop cooperation, strategic partnerships and specialized networks in this area in order to ensure the exchange of experience and increase the impact of its initiatives at the national and international level. Thus, international meetings of Interpol experts on genocide, war crimes and crimes against humanity, the organization of forums for information and discussions among specialists are part of Interpol's ongoing support in developing global experience in this area. An important role in the prevention of these crimes is played by the International Information and Coordination Centre of Interpol. By coordinating the activities of the units on war crimes and genocide, exchanging information between the structures of the member states and international partners, the centre helps to establish an environment of the broadest possible mutual assistance and to establish effective cooperation. This centre also helps national and international partners in the analysis and exchange of evidence and intelligence related to the commission of genocide, war crimes and crimes against humanity.

3. European legal instruments on extradition

Finally, the role of the Council of the European Union and its relevant structures should also be noted. Thus, on 13 June 2002, the Council of the European Union, in order to ensure close cooperation between national authorities in the investigation and prosecution of the crime of genocide, crimes against humanity and war crimes (known under the general name of "major international crimes"), created the European Network for the Investigation and Prosecution of Genocide, Crimes against Humanity and War Crimes (the "Genocide Network"), the activities of which were strengthened by the decision of 8 May 2003. The mission of the Network is to ensure that perpetrators do not go unpunished in Member States.

EU countries are represented in the Genocide Network through National Contact Points, which are made up of specialized prosecutors, investigators and mutual legal assistance officers. Contact points provide operational support to their counterparts at national and EU level in the form of judicial cooperation. The Network provides a platform for practitioners to exchange operational information, experience and best practices through meetings held every two years. The Network is a unique forum in which national authorities of Member States join observer states and associated

organizations from the EU, the UN and individual countries, as well as civil society, to achieve the common goal of combating impunity.

The Secretariat of the Genocide Network was established in 2011 and is hosted by Eurojust. The Secretariat is part of the Eurojust staff, functions as a separate unit and uses the administrative resources of Eurojust to carry out its tasks.

Eurojust has observer status in the Network, joining selected non-EU states, Europol and the Public Prosecutor of the International lead court. With the introduction of the new Eurojust Regulation in 2019, the Agency also took on a central role in coordinating the fight against major international crimes. Together, Eurojust and the Network ensure close cooperation and information exchange between national authorities. Due to the often complex nature of cross-border investigations, the Agency's support through judicial instruments such as coordination meetings and focal points is in many cases a key success factor.

Eurojust also provides practical, legal and financial support to joint investigation teams, which often draws on the observations and insights of the Genocide Network[22]. In addition, investigations benefit from the Agency's global network of prosecutors and contact persons, giving prosecutors rapid access to more than 50 jurisdictions worldwide.

In accordance with Article 1 of the European Convention on Extradition of 13 December 1957, States have undertaken to extradite to each other, subject to the provisions and conditions set out in this Convention, all persons against whom the competent authorities of the requesting party are conducting proceedings in connection with any crime or who are wanted by the said authorities for the execution of a sentence or arrest warrant.

Unlike the 1948 Convention, the European Convention on Extradition of 13 December 1957 provides broad grounds for refusing extradition requests. States parties to this Convention may refuse extradition on such grounds as the existence of the death penalty in the requested country, the place where the crime was committed, military crimes, etc.

The most serious of these is the commission of a "political crime", which is traditionally given different interpretations in states. In general, "the doctrine of political offence in extradition law represents the refusal of one country to extradite an accused or convicted person if that person was to be tried for a political offence"[23].

The Model Treaty on Extradition, adopted by the UN General Assembly on 14 December 1990, clearly states that extradition shall not be granted "if the offence for which extradition is requested is regarded by the Requested State as an offence of a political nature"[24].

This provision is also reflected in Article 3 of the European Convention on Extradition of 13 December 1957, according to which extradition shall not be granted if the offence for which extradition is requested is regarded by the Requested Party as a political offence or as an offence connected with a political offence. The same rule shall apply if the Requested Party has substantial grounds for believing that the request for extradition for an ordinary criminal offence 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. However, according to this Convention, the murder or attempted murder of the head of state or a member of his family cannot be considered a political crime.

In the presence of such general international legal provisions on extradition, the presence of a clear formulation of the provisions of national legislation helps to avoid a number of practical difficulties in the extradition of persons who have committed such a grave international crime as

[22]EU Agency for Criminal Justice Cooperation: Annual Report 2022, (Publications Office of the European Union 2023) 16.

[23]Christine E. Cervasio (1999), Extradition and the International Criminal Court: The Future of the Political Offense Doctrine, 11 Pace Int'l L. Rev. 419.

[24]Model Treaty on Extradition (Adopted by General Assembly Resolution 45/116, amended by General Assembly Resolution 52/88)

genocide. In this sense, we consider the construction of Article 3.1.3 of the Law on Extradition of the Republic of Azerbaijan, adopted on May 15, 2001 to be exemplary, where after the provision "If the act committed by the person whose extradition is requested, which is the basis for extradition, is recognized by the Republic of Azerbaijan as a crime of a political nature", the note indicates that "In the application of Article 3.1.3 of this Law, the following actions shall not be considered a crime of a political nature - crimes against humanity, provided for by the General Assembly of the United Nations in the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948"[25].

Due to the absence of provisions at the international level on the responsibility of states for failure to comply with the requirements for the extradition of the requested person, difficulties arise in executing the corresponding requests. In view of the fact that extradition is not carried out if the crime for which it is requested is considered by the Requested Party as a political crime, it is necessary to supplement paragraph 1 of Article 3 of the European Convention on Extradition of 13 December 1957 with the content that genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide shall not be regarded as political crimes.

Article VI of the Genocide Convention provides that a person may be tried "by a competent court of the State in the territory of which the act was committed, or by such international criminal tribunal as may have jurisdiction", but does not impose a direct obligation on other States to investigate and prosecute or extradite suspects for crimes committed abroad. Likewise, there is no express treaty obligation to investigate and prosecute or extradite suspects for crimes against humanity committed abroad. Unlike war crimes, genocide, and torture, there is currently no comprehensive treaty covering crimes against humanity. In fact, there are currently more than a dozen international instruments that define the concept. However, some of the underlying acts that constitute crimes against humanity may overlap with the treaty concerning war crimes, genocide, torture and enforced disappearances.

It is common knowledge that States may investigate and prosecute crimes of genocide when these crimes were committed abroad. One justification for this rule of international law is that the crimes are crimes against the international community as a whole and, as such, every member of the international community has an inherent interest and responsibility to ensure that the perpetrators of such crimes do not evade justice or fail to provide reparations to the victims and their families.

There is also now growing recognition by States, intergovernmental organizations and national courts that there is an obligation on the State under customary international law to investigate and prosecute serious crimes under international law, including crimes against humanity, genocide and torture, whether or not there is a link to the State. This is also confirmed by the long list of General Assembly resolutions concerning the universal prosecution of serious crimes, culminating in principle 4 of resolution 60/147 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Crimes. In this resolution, the General Assembly declared: "In cases of gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law, States have a duty to investigate and, where there is sufficient evidence, an obligation to bring to justice the person allegedly responsible for the violations and, if found guilty, an obligation to punish her or him" [26].

All States that have ratified the Rome Statute have thereby gained an additional incentive to prosecute or extradite alleged crimes in accordance with international law. Through the principle

[25]Law on Extradition of the Republic of Azerbaijan, adopted on 15 May 2001. "Azərbaycan" qəzeti, 19 iyun 2001-ci il, №136.

[26]Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. General Assembly Resolution 60/147, UN Doc A/RES/60/147, 16 December 2005.

of reciprocity, States have the primary responsibility to bring to justice alleged perpetrators of crimes under the Rome Statute. The ICC's jurisdiction is complementary to that of national courts, so the ICC only intervenes if the state with jurisdiction is unwilling or unable to effectively hear the case. This principle of reciprocity is emphasized in the preamble to the Rome Statute, which provides that "it is the duty of every State to exercise its criminal jurisdiction over persons responsible for international crimes". This duty was recently reiterated in the Assembly of States Parties' resolution on the review of the ICC.

When an alleged perpetrator of crimes is within a state's borders, it must decide whether to extradite or prosecute the person itself. However, extradition is not always possible. Sometimes the requesting state has no interest in prosecuting the person and does not seek extradition. Even when they seek extradition, requested states may have difficulty complying with extradition requests where the legal framework for extradition has not been agreed upon between the two countries or where there are serious concerns about a fair trial.

Extradition and surrender of a person must be consistent with international law and human rights. The detaining state must have a legal basis for doing so, and the detainee must be able to challenge the grounds for deprivation of liberty when the surrender is considered.

Under the 1957 Convention, States may refuse to transfer a person to a State where he or she would face a real risk of being subjected to torture or other inhuman treatment, enforced disappearance, persecution or arbitrary deprivation of life. A person who is subject to an extradition request must have the opportunity to challenge the transfer on these grounds before an independent decision-making body before the transfer takes place[27].

States have developed formal procedures in the form of treaties under which criminal suspects are transferred from one state to another. These treaties may also create obligations to extradite certain individuals upon request if certain criteria are met. Many extradition treaties and domestic laws impose other restrictions on extradition, including prohibiting the extradition of nationals, refusing to extradite individuals accused of political crimes, and extraditing only if the alleged crime is a crime in both states[28]. As Matti Joutsen rightly points out "in respect of extradition, the political nature of the offence is generally a mandatory cause for refusal" [29].

In 2005, all EU member states replaced the extradition system between them with the European arrest warrant, a framework decision requiring each national judicial authority to recognize, with a minimum of formality, requests for extradition made by a judicial authority in another state.

Compared to previous extradition procedures, the execution of the European arrest warrant includes the following innovations:

- the extradition of persons within the framework of the European arrest warrant is now carried out within the framework of a judicial procedure;
- the application of the European arrest warrant does not require that the act be considered a crime in the legislation of both states;
- unlike international treaties, the Framework Decision of the European Council of 13 June 2002 "on the European arrest warrant and the procedure for the surrender of persons between Member States" provides for a limited list of grounds (mandatory and optional) for refusing to execute the European arrest warrant;
- the surrender of persons within the framework of the European arrest warrant does not require compliance with the "political offence" rule;

[27]Chahal v. The United Kingdom App no 22414/93 (ECtHR, 15 November 1996), para 80; Agiza v Sweden Communication no 233/2003, (UN Committee Against Torture, 20 May 2005), para 13.5.

[28]REDRESS and FİDH, Extraterritorial jurisdiction in the European Union: A study of the laws and practice in the 27 member states of the European Union (December 2010), 11.

[29]Matti Joutsen, International cooperation against transnational organized crime: extradition and mutual legal assistance in criminal matters. The 119th International Training Course (October, 2002). Resource Material No.59. 384.

- Member States of the European Union no longer have the right to refuse to extradite their citizens; However, there is a discretionary provision making the execution of the warrant conditional on the guarantee that, after sentencing, the person in question will be returned to his or her State of nationality to serve the sentence there.

In accordance with the Framework Decision establishing the European arrest warrant, the crimes falling within the jurisdiction of the ICC are specifically mentioned as crimes to which the requirement of double criminality cannot be applied[30].

CONCLUSION

Thus, ensuring effective prosecution of the crime of genocide presupposes effective extradition of the persons who committed it. It is no coincidence that the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, separately addresses the issue of extradition. It is argued that the extradition and transfer of a person must be consistent with the norms of international law and human rights. The state that has detained a person must have a legal basis for doing so, and the detained person must be able to challenge the grounds for deprivation of liberty when considering the issue of transfer. The author notes that the authorities of countries sending extradition requests should promptly comply with requests from their foreign colleagues. This is especially true when, in accordance with internal procedures, it is assumed that evidence provided by the authorities of the requested country will be assessed in support of their extradition request.

Many extradition requests in the past have not been satisfied by the relevant authorities of the requested countries. So, it is necessary to revise some provisions of the international legal institution of extradition. This is especially important in the aspect that, unfortunately, even today there are cases when the corresponding requests for extradition or surrender of persons are often delayed or rejected by the country receiving the request for various reasons: differences in the rules of evidence, different justice systems, the existence of the death penalty in the requested country, the absence of a bilateral extradition treaty, constitutional prohibitions on the extradition of their citizens, political disagreements, etc.

Despite the existence of detailed legal regulation of the international legal institution of extradition, in practice there are major problems regarding the extradition of political refugees, their own citizens, extradition at the request of two States, as well as the application of grounds for refusal of extradition. In addition, the absence at the international level of provisions on the responsibility of States for failure to comply with the requirements for the extradition of the requested person hinders the full functioning of this institution in the modern period. The solution of these problems is reasonable through regulation within the framework of a universal international treaty, coupled with mandatory specification in national legislation. In recent years, the principle of aut dedere aut judicare (“either extradite or prosecute”) has been widely used. Reflecting this principle in treaties entails a fundamental change in the domestic legislation of the state, which is a very costly and labor-intensive process. At the same time, it is an effective means and significantly improves the process of administering justice. Thanks to this principle, there will be no problem associated with the fact that states do not have certain crimes provided for in other states. And it will turn out that if extradition is refused, states will have only one way out - to convict the criminal.

In order to bring the European Convention on Extradition of 13 December 1957 into line with the requirements of Article VII of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, we propose to supplement paragraph 1 of Article 3 of the European Convention on Extradition with the following content: after the sentence “Extradition shall not be granted if the crime for which it is requested is considered by the Requested Party as a political

[30]Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), Article 2(2).

crime or as an crime connected with a political crime" with the second sentence: "The following shall not be considered as political crimes: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide."

Taking into account the fact that in modern conditions Interpol is the leading organization of international cooperation of states not only in the fight against transnational crime in general, but also an authoritative participant in the international community's counteraction of crimes that pose a threat to the international and national security of states, which includes the crime of genocide, in our opinion, in order to effectively implement the requirements of Article VII of the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, it is necessary to increase the role of Interpol in the fight against the category of criminal cases in question and make appropriate amendments to the Statute of the International Criminal Police Organization. Thus, in connection with the above, it is proposed to make the following addition to Article 3 of the Statute of Interpol: after the sentence "The Organization is strictly prohibited from carrying out any intervention or activity of a political, military, religious or racial nature", supplement the article with the following sentence: "The following shall not be considered as political crimes: genocide; conspiracy to commit genocide; direct and public incitement to commit genocide; attempt to commit genocide; complicity in genocide". We believe that the specified additions comply with the requirements of the Genocide Convention and will significantly increase the effectiveness of legal proceedings in the category of criminal cases under consideration.

In the modern period, it is also necessary to increase the effectiveness of Interpol's activities in this area, expand its exclusive role and experience in the extradition of persons who have committed genocide. Currently, Interpol is implementing a number of measures to ensure strategic operational-search support, as well as strengthening coordination and cooperation between the authorities of the relevant stakeholders. Among them, operational support should be noted first of all. Interpol provides operational support to international criminal tribunals and justice authorities of the member countries of the organization, facilitating access to its data. Of particular value to national law enforcement agencies is Interpol's assistance, its technical tools, resources and experience in the field of solving serious international crimes, as well as information exchange and coordination of investigations of serious international crimes. It is no secret that the investigation of war crimes, genocide and crimes against humanity requires special training and knowledge. In this regard, today Interpol plays a key role in expanding the capabilities of investigators of member states to investigate these serious international crimes, including the collection and processing of evidence related to mass atrocities.

In order to further enhance the role of Interpol, in the Resolution "Strengthening Interpol's support to the investigation and prosecution of genocide, war crimes and crimes against humanity" of 8 October 2004, the Interpol General Assembly recommended that, within the framework of national and international law, Interpol member countries should cooperate with each other and with international organizations, international criminal tribunals and non-governmental organizations, to combine efforts to prevent genocide, war crimes and crimes against humanity, as well as to investigate and bring to justice those suspected of having committed these crimes. It is noted that today the Interpol Fugitive Investigation Support Unit at the General Secretariat in Lyon maintains close liaison with its network of specialized investigators, national central bureaus, and especially the ICC, in exchanging information and data concerning the possible whereabouts of fugitives wanted for genocide, war crimes and crimes against humanity.

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