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CURRENT TRENDS IN JURISPRUDENCE REGARDING THE PROTECTION OF FUNDAMENTAL HUMAN RIGHTS IN RELATION TO THE GROUNDS FOR OPTIONAL REFUSAL OF EXTRADITION OF A PERSON TO THE RUSSIAN FEDERATION

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Abstract

The phrase "security and public safety" has multiple meanings and can be analyzed by referring to the protection of fundamental human rights during judicial proceedings, including in the field of international judicial cooperation in criminal matters.

A request for the passive extradition of a national of a member state or a third country, requires the executing state to check (if the extradition affects the rights included in the content of art. 19 paragraph (2) of the Charter of Fundamental Rights of the European Union (CFREU).

This paper aims to analyze the optional reason for refusing the extradition of a person to the Russian Federation, in the current international context, through the lens of national and European jurisprudence in the matter.

Key words: *passive extradition, European Extradition Convention of 1957, optional reason for refusal, serious risk, national and European jurisprudence.*

INTRODUCTION

From the perspective of international cooperation in criminal matters, the concept of "public security and safety" must be analyzed in all its facets, so that legal assistance mechanisms, such as extradition, constitute a genuine means of fighting crime, but are, at the same time, and a means by which the rights of persons subject to extradition are respected. Guaranteeing respect for fundamental human rights has its origin in the relationship between the state and the individual

and is an indispensable condition for the development of the rule of law (*O.M.Salomia, 2019, p.297*). The supremacy of these values is reflected, at the national level, in the provisions of article 1 paragraph (3) of the Romanian Constitution.

Subversive actions, of armed aggression against a state, violate order, safety and security and impose, among other things, coercive measures that the authorities, including the judiciary, must adopt in order to guarantee the rights and freedoms of citizens.

The realities of the contemporary world, which find their concreteness in the current tense situation, generated by the odious war started by Russia, have required the taking of firm measures on the part of international institutions and organizations, the institutions of the European Union, including the states of the Eastern Partnership. The scale of particularly dangerous military actions, for state security, the maintenance of order and respect for the law, including fundamental human rights and freedoms, at the global level, but especially at the European level, have imposed security restrictions. The escalation of the war imposed a nuanced approach, with an emphasis on humanitarian protection standards, from the judicial authorities of the member states, including the segment of international judicial cooperation.

Thus, in order to guarantee the respect of the rights and freedoms of citizens conferred by the constitutional norms, but also by the European regulations, the courts of the member states proceeded to a generous interpretation of the notion of "serious risk" to which a person requested by to a third country in order to be handed over for the purpose of judicial investigation or the execution of a sentence.

The safety of a person who is the subject of an extradition request, in the judicial procedure, finally confers the guarantee of public safety, since this notion is a form of legal security of any person participating in social and legal relations in a state of law. Last but not least, from this perspective it is necessary to specify that in the matter of international judicial cooperation the principle of moderate exercise of judicial cooperation operates, as it results from the economy of Article 3 of Law no. 302/2004, republished as it must be subsumed under the protection the interests of sovereignty, security, public order and other national constitutional interests" (**S.I. Goia, 2021, p. 485*) Therefore, whenever an extradition request is formulated, when resolving it, the , the aforementioned interests, in particular, security and the need for public safety. Therefore, whenever an extradition request is made, the aforementioned interests, in particular, security and the need for public safety, must be taken into account when resolving it.

Obviously, looking at this concept from another angle, in correlation with the principle of respecting the fundamental rights of the person during judicial proceedings, we must emphasize that public safety also implies the restriction of the exercise of fundamental rights and freedoms, but which must be expressly

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provided by law and to respect the substance of these rights and freedoms (art. 52 para. 1 of CFREU and art. 2 para. 3, 4 of Protocol no. 4 to the Convention for the Protection of Human Rights and of fundamental freedoms).

Next, we propose, within our theoretical approach, to highlight issues regarding the passive extradition of a national of a member state or a third state (the Russian Federation), insisting on the optional reason for refusal, with an emphasis on the protection standards provided by the provisions Art. 19 paragraph (2) of the Charter and national and European jurisprudence on this segment.

I. PASSIVE EXTRADITION. REGULATORY

The need for public safety and security is not a foreign concept to the segment of judicial cooperation, since extradition is an institution that works directly in the interest of the requesting state, but indirectly supports the interests of other states, because the prevention and combating of crimes is a subject of collective interest (*C.Bassiouni, 1974, p.134*).

In the international conventions and bilateral treaties regarding the extradition procedure, it is mentioned that the handover will be done ("the contracting parties undertake to hand over each other") on a reciprocal basis, based on the rules and conditions expressly included in these international legal instruments (*M.Pătrăuș, 2021, p.30-31*).

The seat of the matter is, at the international level, the European Convention on Extradition (*Paris, 13.12.1957, in force since 18.04.1960*) and its Additional Protocols (*Strasbourg, 15.10.1975; 17.03.1978; 10.11.2010*), a genuine document with continental effects in the field of extradition, complied with by the ECHR Convention (art. 3), the *Treaty of Lisbon (art. 6 TEU, art. 82 TFEU)*, and domestically, by the fundamental law (*art. 19 paragraph 2 and art. 22 of the Constitution*), the Criminal Code (*art. 14*) and Law no. 302/2004, republished (*art. 18*).

Since we proposed to analyze the optional reason for refusing to execute an extradition request made by the Russian Federation to a member state, it is necessary to mention that in the relationship with Romania, in the extradition segment, the provisions of the Treaty regarding the granting of legal assistance in civil, family and criminal cases of 04/03/1958 (*in force since 08/04/1958*), which is based on the rule of international courtesy and establishes the principle of reciprocity regarding surrender based on an extradition request between the contracting parties.

In the extradition procedure, both the general principles that we find in all instruments of international judicial cooperation in criminal matters are applicable, such as the guarantee and full exercise of the right to defense within the judicial procedure, respect for the procedural rights of the persons who are the

subject of a criminal trial (C.D. Miheș, 2017, p.460), but also principles specific to this procedure, namely the principle of respecting the independence and sovereignty of each state (S.I. Goia, 2020, p.46), the priority application of international legal norms in relation to domestic criminal law norms, non-extradition certain categories of persons, the performance of the international regularity examination and the respect of fundamental human rights.

The 1957 convention on extradition, art. 6 of the TEU, but also the Charter (art.52 para.3 final sentence), as well as art. 21 of Law no.302/2004, art. 20 and 24 of The Constitution provides procedural guarantees to the person requested for extradition.

In line with the need to respect fundamental values, the Court of Justice of the European Union (CJEU) has developed a body of legal principles, including in the field of human rights, deriving from national constitutional traditions, from the ECHR, as well as from international treaties signed by member states" in order to provide adequate protection standards, for the respect of human rights in the light of the provisions of the Charter of Fundamental Rights of the Union" (*P.Craig, G.de Burca, 2017, p.426*). With regard to the principle of respect for human rights, included in the content of art. 6 of the TEU, we must mention that it has binding legal value, and the fundamental rights guaranteed by the ECHR find their concreteness in this general principle of Union law. The inclusion of human rights in European Union law was achieved by the CJEU (Court of Justice of the European Union), which recognized that human rights, as defined by two sources - international law, with reference to the ECHR Convention the internal law of the member states - represent general principles of Union law and their compliance is a *sine qua non* condition for the legality of all regulations and led to the development of the theory of autonomous effective protection of Human Rights in the European Union (*ECHR Bosphorus Hava Yollari Turizm/ Irlanda, pct.73-81*).

The CJEU frequently examined the consistency of legislation adopted by the EU legislative institutions with fundamental rights (C-509/19, *W.S.Bundersrepublik Deutschland pt.72,78,84,100*), set rules for the protection of fundamental rights and ruled, referring to the jurisprudence The Court of Strasbourg the need to ensure effective legal protection, an element inherent in the right to a fair trial (C-354/20, C-412/20 PPU, *point 39,52,61,64; C-219/ 17 Silvio Berlusconi, points 45-46*).

The priority of Union law in relation to the internal constitutional order of each member state and the conditioning of Union law to ensure a viable protection of human rights were enshrined by the jurisprudence of the Luxembourg Court (C-11/70, *Internationale Handelsgesellschaft, pct.4*).

Extradition from Romania is carried out based on the provisions provided in Title II, Section 2 of Law no. 302/2004, the conditions for the admissibility of the request being those regarding the act, the person, the procedural provisions and the punishment. With regard to these conditions, including the mandatory

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reasons for refusal, the content of the request and the judicial procedure of extradition, we do not propose to make developments, this paper giving attention and space to an impediment to the execution of the extradition request, regarding which we will make an exhaustive presentation .

Passive extradition is regulated internally in Title II, Chapter I, art. 18-60 of Law no. 302/2004.

II. IMPEDIMENT TO THE EXECUTION OF THE EXTRADITION REQUEST

From the economy of art. 22 paragraph (2) of Law no. 302/2004, it follows that Extradition to a third country can be refused if it would have consequences for the requested person" in particular, due to his age or health condition".

An ad litteram interpretation of the legal text leads us to the idea that, the substantive condition regarding the requested person is not met, interfering with the execution, when due to age or health the extradition would have particularly serious consequences for him. We believe that the expression "in particular" must be analyzed through an extensive interpretation, which includes the standard of protection conferred by the European legislator through the provisions of art.19 paragraph 2 of the Charter. Thus, an optional reason for refusing extradition is the existence of a serious risk for the requested person, which implies protection against any inhuman or degrading punishment or treatment in the requesting state. Moreover, this provision transposes at the Union level the relevant jurisprudence related to art. 3 ECHR (Ahmed/Austria, pt. 22). In other words, Romania, a contracting party to the ECHR Convention (European Convention on Human Rights), according to the provisions of art.1, has the obligation to recognize every person under its jurisdiction the rights and freedoms provided for by the Convention and must respect the jurisprudence the European Court of Justice (*for developments, see S. Franguloiu, N. Hegheş, M. Pătrăuş, 2023, p.138-140*).

Under these conditions, Romania, as a member state of the European Union, in case of passive extradition has the obligation to check whether the surrender based on the extradition request would not be likely to affect (the extradition will not affect the rights) the rights protected by the provisions of the CDFUE and European Convention on Human Rights.

The existence of serious reasons that form the conviction of the court that the extraditable person, if he will be handed over to the requesting state, risks suffering an injury to his rights, i.e. being subjected to torture, inhuman or degrading treatment or punishment, justifies the incidence of the optional reason for refusal, with the consequence of the rejection of the extradition request.

The competent court has the obligation to concretely analyze the existence of an impediment justifying the refusal of judicial cooperation.

Therefore, in the event that there are data and information regarding the requested person according to which in the requesting state there is a serious risk of violation of fundamental human rights and freedoms or that he could be subjected to inhuman or degrading punishment or treatment, the competent judicial authority from the requested state can invoke the optional reason for refusing the extradition request, for this reason. Since it is an optional reason, the court must make an assessment *in concreto*, in the case brought before the court, since the substantiation of the decision to reject the extradition request on this basis is a matter of interpretation and application of the law.

When the request for passive extradition includes the details regarding the requesting authority, all the data regarding the requested person, those regarding the final court decision, the presentation of the facts and the relevant legal norms, including those regarding the prescription of criminal liability or the execution of the sentence and after the examination of international regularity, the request of extradition is sent to the prosecutor who will notify (the court of appeals) the competent court to resolve the request, since the extradition procedure is a judicial one (*art. 36-42 of Law no. 302/2004*), the intervention of a judge providing a jurisdictional guarantee to the extradition procedure (***M. Pătrăuș, 2019, p.3*). The appeals court within the range of which the wanted person was located does not have the competence to rule on the merits of the accusations made by the judicial authorities of the requesting state, nor on the appropriateness of extradition, but will have to quickly verify whether the conditions of extradition are met and resolve the cause for the admission or rejection of the request. If the formal and substantive conditions are met, and there are no mandatory or optional reasons for refusal, the request will be accepted, and the requested person will be extradited to the requesting state. In the situation where there are grounds for mandatory refusal of the extradition request (*art. 21 of Law no. 302/2004*), the judge finding the incidence of one of those expressly provided for in the 1957 Convention, transposed into the framework law at the national level, will reject the request. When there is an optional reason for refusal, such as the one included in the content of *art. 22 paragraph (2) of Law no. 302/2004*, the judge must analyze in relation to the particularities of the case, if there is a significant risk for the extraditable person to be subjected to degrading or inhumane treatment in the situation in which she will be handed over to the requesting state.

This impediment to the execution of an extradition request was invoked in connection with Russia's recent military aggression against Ukraine, which, as noted in the doctrine, has shaken the peace in Europe and fundamentally changed the vision of security, demonstrating that "the unpredictable never stops it surprises us" (*M. Dincă, Al.M. Dincă, 2022, p.98*).

Taking into account that, on 15.03.2022, the Russian Federation initiated the withdrawal procedure from the Council of Europe, and Russia's war against Ukraine escalated, the European institutions combined their efforts, including in

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the segment of respect for human rights and fundamental freedoms by the aggressor state . We exemplify in this sense the Resolution of the European Parliament of 16.02.2023 on the anniversary of one year since the beginning of the invasion and war of aggression waged by Russia against Ukraine (2023/2558(RSP)), which affirms the negative impact of Russian aggression on the security of all countries from the Eastern Partnership of the European Union and emphasizes the need to combine the efforts of the member states in promoting solidarity and cooperation, which (*sub.ns.-M.P*) must be achieved not only at the economic, social, military level, but also at the legal level, through an innovative approach to the issue of judicial cooperation in criminal matters, in the current context.

The security and safety of the member states, but also of those in the Eastern Partnership, are of the essence of European democracy and are necessary to ensure stability and prosperity in the region, or the lack of data that outlines the conviction of the existence of an effective system to prevent torture, the uncertainty that the assurances given by the Russian Federation are real from the perspective of European protection standards regarding human rights and fundamental freedoms, Russia's constant denial of human rights violations, despite the contrary data from credible sources, currently creates serious problems with regard to the application of the mechanisms of international legal assistance in criminal matters in relation to the Russian authorities.

Additionally, the legislation of the requesting state must ensure a judicial procedure that is *sufficiently accessible, precise and predictable* in terms of the field of applicability, in order to avoid the risks that the extraditable person will be subjected to torture or other inhuman or degrading punishment or treatment, an aspect revealed by the jurisprudence Courts of Strasbourg (*Soldatenko/Ukraine; Shakurov/Russia*).

Even if the Russian Federation, in addition to the extradition request, gives assurances that, in case of surrender, the rights of the person requested in the extradition procedure will be respected, according to the provisions of art.3 and art.6 of the European Convention on Human Rights, the judge invested with the solution the case must make a rigorous assessment and evaluation in this regard, considering that from 15.03.2022, the Russian Federation initiated the withdrawal procedure from the Council of Europe. Regarding this aspect, it should be noted that immediately after the start of the war (one day after the Russian invasion), the Russian Federation decided to withdraw from the Council of Europe, an international, intergovernmental and regional organization which, through the Commissioner for Human Rights, exercises powers in regarding the verification of respect for human rights and the rule of law (*Resolution (99)50 art.1 pt.2*), thus placing itself in a position of denying the jurisdiction of the European Court of

Human Rights. Moreover, prior to the outbreak of the war between Russia and Ukraine, in the reports drawn up by international organizations on human rights, data were attested to the effect that the Russian state has real problems, the existing evidence and information revealing that in this state there are serious deficiencies in terms of the non-application of torture, inhumane or degrading treatments. Following the outbreak of the currently ongoing armed conflict, through legal documents issued by the European Parliament, the violation by the Russian Federation of its international obligations regarding human rights was found (*Resolution of the European Parliament of 16.12. 2021 regarding the continuous repression of civil society and defenders of the right of man in Russia, letter l; Resolution of the European Parliament of 1.03.2022 regarding Russia's aggression against Ukraine (2022/2564(RSP), points 14 and 45).*

The aspects we have referred to are essential elements that the judge must analyze in the context of an extradition request from the Russian Federation, through a judicious interpretation and application of the law, in order to verify the guarantees provided by art. 19 para. 2 of Charter and dispose accordingly.

III. RELEVANT EUROPEAN AND NATIONAL JURISPRUDENCE

The Court of Justice of the European Union, based on the provisions of art. 267 TFEU, was called to rule on the obligations of a member state, in the passive extradition procedure, to inform another member state of the Schengen area, when the person in question is a citizen of to the member state of the European Free Trade Association (EFTA) and to hand over the extraditable person when requested to this state, not to the third state (*C-897/19 PPU*).

In the case, the Luxembourg Court showed that the requested member state has the obligation to check with priority, in accordance with the provisions of art. 19 paragraph 2 of the Charter, if in case of extradition, if the requested person will not be subject to the risk of being subjected to a death penalty or inhuman or degrading treatment. As part of the verification of this condition, the EU court emphasized that an essential element is that the extraditable person, prior to acquiring the citizenship of the EFTA state, obtained asylum on the grounds that a criminal investigation procedure was underway in the applicant state regarding him, which, otherwise, he also motivated the extradition request. In these conditions, the Court ruled that before verifying the conditions for extradition, the requested member state has the obligation to inform the EFTA state about this situation, in order to be allowed to request the surrender of the requested person, provided that the EFTA state is competent, based on national legislation, to carry out a judicial procedure against that national for crimes committed on the territory of another state.

In essence, it was noted that on the 20th of May 2020, a Russian citizen, who in the meantime acquired Icelandic citizenship, was arrested in Croatia on 30.06.2019, based on an international warrant issued by the Interpol Moscow

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office. The court in Croatia, called to rule on the extradition request, assessed that the legal conditions were met and ordered the extradition of this person to Russia. The Supreme Court of Croatia, in the appeal filed by the extraditable person, related to the fact that he invoked the existence of a risk of torture and inhuman and degrading treatment in the event of extradition to Russia, and Iceland granted him refugee status due to the criminal prosecution launched in Russia, as well as the circumstance that the enforcement court did not respect the CJEU judgment in the case *Petruhhin (C-182/15, Bitanga, Marijan; Franguloiu, Simona; Sanchez-Hermosilla, Fernando, 2018, p.22-27)*, decided to address the Luxembourg Court by way of a preliminary ruling. It is necessary to mention that, in this case, the Court ruled that in the case of an extradition request concerning a citizen of the Union, a national of another member state of the Union, the Framework Decision 2002/584 applies, if the state of which the person is a national case has the competence to prosecute him for the acts committed outside the national territory. Regarding this last aspect, the Court considered that the previously mentioned decision refers to the nationals of the member states, or in this case, the requested person is not a citizen of the Union, but a national of a third country. However, the Court revealed the need to verify the protection guarantees included in the content of art. 19 paragraph 2 of the Charter, emphasizing the usefulness of examining the case through the lens of an essential element, namely whether the handover to the requesting state will not affect the rights provided for by the Charter. Taking into account the existing information, according to which the person in question obtained asylum in Iceland precisely because a criminal prosecution procedure was initiated in Russia, the Croatian judge was entitled to thoroughly analyze the situation of the extraditable person in the light of art. 19 para. 2 of the Charter, extradition not being justified unless, following the assessment of the situation, based on "objective and proportional considerations", it is found that the objective legitimately pursued by national law is achieved. The Court underlined that the Croatian state does not extradite its own citizens, which establishes a difference in treatment with regard to nationals of other states, including EFTA states, who must benefit from the same elements of protection against extradition. In the Court's opinion, it is justified and there is a legal basis for the requested state to seek to avoid the risk of impunity for extraditable persons, which is why the regulation on extradition appears to be adequate to achieve the objective, "but the proportionality of such a restriction is debatable", and that is precisely why the solution in the *Petruhhin* case was deemed to be applied by analogy to the Icelandic citizen who was, in relation to the third country that requested extradition, in a similar position to a citizen of the Union", according to art. 3 paragraph (2) TEU. Referring to the adequate protection, the Court emphasized that it is only covered in principle, by international regulations

(declarations and treaties), the competent court in the requested state being obliged to pronounce the decision based on "objective, reliable, precise and up-to-date elements" , as it results from the judgments of the ECtHR, also taking into account judicial decisions pronounced in the requesting state, documents drawn up by bodies of the Council of Europe or those of the United Nations system (*C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru, pts.88-89*).

On the domestic level, the High Court of Cassation and Justice, in a recent case, admitted the appeal of the extraditable person A. and rejected the extradition request, noting the existence of an impediment to surrender to the Russian Federation.

It was essentially held that the said A. was requested by the judicial authorities in Russia in order to be investigated for several crimes of organized crime, i.e. participation in a criminal association established for the purpose of committing serious and particularly serious crimes, smuggling by passing across borders of narcotic substances in large proportions, committed by an organized group and attempted illegal marketing of narcotic substances committed in an organized group, acts criminalized by the provisions of art. 210 paragraph (2), art. 229/1 paragraph (4) letter. a), art. 30 paragraph (3) and art. 228/1 paragraph (4) letter a) and d) Criminal Code of the Russian Federation.

Suceava Court of Appeal, by criminal sentence no. 47/10.05.2022, based on art. 52 paragraph (1) letter c) and paragraph (3) of Law no. 302/2004 ascertained the fulfillment of the conditions regarding extradition and admitted the extradition request made by the General Prosecutor's Office of Russia, ordering the surrender of the said A. to the judicial authorities of the Russian Federation.

It was found that, in this case, the provisions of the European Convention on Extradition (1957) transposed into the national regulation by art. 18-60 of Law no. 302/2004 are applicable.

The court analyzed the substantive and formal conditions of the extradition procedure, finding that the condition of double incrimination and the one related to the seriousness of the facts, provided by art. 24 and 26 of Law no. 302/2004, republished, were fulfilled, since the facts for which the extradition procedure was initiated criminal prosecution on the territory of Russia have a counterpart in the national regulation in the provisions of art. 367 paragraph (1) and (2), art. 3 paragraph (3) of Law no. 143/2002 on the prevention and combating of illicit drug trafficking, art. 32 paragraph (1) Criminal Code related to art. 2 paragraph (1) of Law no. 143/2002. At the same time, it was found that the limitation period for criminal liability has not been met, a condition imposed by the provisions of art. 18-19 of Law no. 302/2004, republished.

However, the trial court did not analyze the optional reason for refusing extradition, provided by art. 22 of Law no. 302/2004, republished, through the prism of objective, reliable criteria.

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In the appeal filed by the extraditable person, the court of judicial review assessed that this impediment to execution is applicable in this case, motivated by the fact that Romania must recognize the rights and freedoms defined by the European Convention on Human Rights to any person. Thus, proceeding to the concrete examination of the information obtained and taking into account the situation of the persons requested, the High Court concluded that the inhuman or degrading conditions of preventive detention in this state are systemic and there are data relating to the violation of fundamental human rights by the requesting state. The analysis was also based on the existing situation in this state, revealing the fact that the Russian Federation has withdrawn from the Council of Europe," which calls for increased caution in assessing the consequences that extradition to the Russian Federation could have", the statements of the representative for media freedom of the Organization for Security and Cooperation in Europe from 3.03.2022, as well as on the statement of the UN High Commissioner for Human Rights regarding the latest developments in Russia and Ukraine.

It should be noted that the supreme court has ruled in this regard previously, even if in isolated case solutions, in the sense of rejecting the request for extradition to a third state when from the existing data and information it was possible to prove that the person requested by the requesting state's fundamental rights would be seriously violated. Thus, by criminal decision no. 1529/9.12.2016 pronounced by the High Court, it rejected the extradition request made by the judicial authorities of the Republic of Uzbekistan, regarding the requested person B., regarding whom the criminal investigation was carried out in the third country, the person in question being accused of committing the crimes of international murder, terrorism, attack on the constitutional order, organization of a criminal group and riots, facts provided by art. 97 part 2 letter e), g), i), art. 155 part 3 letter b), art. 242 and art. 244 Criminal Code, which have a counterpart in the Romanian regulations. It was also assessed that the provisions regarding the prescription of criminal liability are not relevant, and despite this, the extradition cannot be accepted, as there is an impediment to execution. In the considerations of the decision, it was shown that the extraditable person had refugee status in Sweden, later acquiring Swedish citizenship, and the reason why he obtained asylum was based on the real risk of suffering ill-treatment in the event that he was returned to the country of origin. Consequently, in accordance with the interpretation given by the Luxembourg Court of Justice in the *Petruhhin* case, the High Court rejected the extradition request citing the incidence of the provisions of art. 19 paragraph 2 of the Charter, as well as the jurisprudence of the Strasbourg Court in the case *Ismailov and others/Russia* emphasizing that, from reliable sources, there are practices of the authorities in the requesting state clearly contrary to the principles of the ECHR Convention, the UN special rapporteurs on torture (2002,

2006) labelling "systematic" and "indiscriminate" the custody of the Uzbek police, and the police staff as a structure "that takes inadequate measures to bring those responsible to justice".

Consequently, it is easily observed that, in line with the practice of the ECHR, the jurisprudence of the Court of Justice of the European Union, at the present time, the national judicial practice reveals the need for a thorough analysis of the impediment to extradition, when the requesting state, a third state, violates the rights and fundamental human freedoms, and the assurances it gives to the requested state are either difficult to verify or clearly contrary to human rights reports, which indicate serious problems with international cooperation with the requesting state authorities in the field of human rights.

In the current context, prudence in the analysis of the case that has as its object a request for extradition to the Russian Federation requires the verification of all objective, reliable, accurate and up-to-date elements, in order to provide each person subject to judicial instruction with the standards of protection imposed by European regulations in the field of human right.

CONCLUSIONS

The current international context has generated a sense of insecurity, which justifies a thorough check by the national judicial authorities of the member states of the fulfillment/non-fulfillment of extradition conditions, when invested with the settlement of a request from a third state, in particular the Russian Federation.

The manifest tendency in matters of extradition, to renounce surrender strictly on the basis of the formal principle of reciprocity, but also the interest in analyzing an extradition request through the prism of the reason for optional refusal to surrender, in order to ensure the content of the protection conferred by art.19 paragraph 2 of the Charter, is the expression, as emphasized in the doctrine, of the paradigm and orientation more towards the concept of security and safety of the person (E.A.Iancu, 2021, p.642).

The optional reason for refusing extradition to a third state, in the conditions where the risks are known, must be judiciously analyzed by the requesting state in order to grant any extraditable person the guarantees imposed by the ECHR Covention and CFRU.

The effective judicial protection emphasized by the Luxembourg Court, an indispensable element of the right to a fair trial, demands that the judicial procedure be sufficiently accessible, precise and predictable, and that fundamental human rights are not violated. If the enforcement court considers that the optional reason for refusing to hand over the extraditable person to the third country is relevant in the case brought before the court, it is obliged to proceed to a judicious analysis of the concrete situation, based on objective and proportional considerations, in order to avoid the risk of the extraditable person

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being subjected to torture or other degrading or inhuman treatment in the requesting state.

Therefore, we consider it necessary that the essential elements be examined more rigorously in the current context, in the extradition procedure in relation to a third state, when the existence of an impediment to execution is established, so that the respect of human rights finds its concreteness in the judicious, effective and unitary application of this mechanism of judicial cooperation in criminal matters.

The objective of extradition, consisting in the fact that a person who escapes on the territory of another state from the criminal justice of the requesting state to be handed over to it, avoiding the risk of impunity of the person to be extradited, is not absolute, since in each individual case, an objective and proportional analysis is required for other reasons as well, which may lead the national judge to find the incidence of an impediment to enforcement. For example, non-discrimination based on citizenship or nationality constitutes a basic principle in the European Union, enshrined in art. 18 TFEU, but it implies the non-application of some differentiations in legal treatment between nationals belonging to member states and those from third countries.

As we highlighted in the previous sections, the analysis of the data and information in the case, respectively of the specific circumstances is particularly useful (for example the evolution of the situation in the Russian Federation or elements that certify that the extraditable person is telling/concealing the truth regarding the legal situation that triggered the initiation of the judicial procedure in the third state), being able to talk about components for the examination of the "real risk" (even if the requested state cannot rule on the merits of the accusation, but only on the proportionality of the measure). These represent objective, adequate and proportional considerations from the perspective of the verification that the competent court makes in order to ensure the protection standards provided in art. 19 paragraph 2 of the Charter. Thus, in relation to the above, we appreciate that not only the declarations of the third state can be taken into account, in the sense that fundamental rights are respected and international treaties are strictly applied, but a judicious analysis, based on objective elements, is necessary, reliable, accurate and up-to-date (for example, ECHR judgments, reports of international organizations on human rights, the evolution of the situation in the third country, etc.).

The protection standards against extradition have been clarified through the interpretation of the European provisions by the CJEU, which requires their uniform application and interpretation by the member states, within the judicial procedures.

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