Extradition in Croatian legislation and legal practice
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1. Introduction
Extradition is the surrender by a state (the requested state) of a person present in its territory to another State (the requesting State) that seeks the person either in order to prosecute him or her or to enforce a sentence already handed down by its courts.\(^1\) We are living in a time when the World is referred to as ‘‘global village’’. The World where countries have united into global institutions such as United Nations, Council of Europe, European Union. The member states of the Council of Europe are attempting to ensure a unified and standardized legal system throughout different treaties and conventions, one of which is the European Convention on Extradition.

When granted, extradition overcomes a major jurisdictional limitation closely linked to State sovereignty. It allows States to accomplish indirectly what they cannot do directly. The law and ratio of extradition is based on a simple principle that it is in the interest of civilized communities that ‘‘crimes should not go unpunished, and it is a part of the comity of nations that one State should afford to every assistance towards bringing persons guilty of such crimes to justice.’’\(^2\). In that way, extradition accomplishes the broader objective of facilitating international assistance and the apprehension of criminals. Of course, the requested State that grants the extradition today may want the requesting State to return that favour tomorrow.

As there is no legal obligation which requires the surrender of fugitives of another system’s justice, the theory distinguishes two approaches: civil law and common law approach. While civil law countries demonstrate a greater willingness to grant extradition in the absence of the treaty on the basis of comity or reciprocity, the common law countries as a general rule don not extradite in the absence of a treaty.

The Republic of Croatia as civil law country which grants extradition in the absence of a treaty on the base of reciprocity, its parliament has brought in 2004 the Act On Mutual Legal Assistance In Criminal Matters (in further text referred to as ZOMPO) which regulates extradition as well as other types of mutual legal assistance (so called small mutual legal

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assistance in criminal matters, as well as taking over and transfer of criminal prosecution and execution of a foreign judgments). Furthermore, the Republic of Croatia is party of multilateral agreements (European Convention on Extradition signed on December 13, 1957 and its Additional protocols signed on October 15, 1975 and on March 17, 1978. ³ ) and bilateral agreements that regulate extradition.

It was mentioned that extradition is a matter of international assistance and as such it is founded on mutually accepted schedule of principles. One of the most vital principles is the principle of extraditability, which states that extradition is possible only for major offences against the law of both parties involved in the process. The principle of extraditability is closely connected to principle of double criminality and reciprocity, which is a rule stating that the extradition cannot be expected from the requested state if the extradition would not be acceptable for the same offence. Overview of these and other extradition conditions will be discussed in later text.

2. Types of Extradition

Extradition is an inter-state diplomatic act and by that, it is a form of cooperation between States. Since the matter of extradition is so closely linked to the inner sovereignty and jurisdiction of the State, in this case Croatia, it is only natural that the actual process of extradition goes through the channels of diplomacy and Ministry of Justice, the Minister itself, who have the authority to allow or to deny any extradition.

When addressing the process of extradition there are two processes of extradition- active and passive⁴, which depend on that whether the state is requesting the extradition or allowing it based on a request from another requesting state. Active extradition is when the state is requesting the extradition of a specific person for a criminal proceeding or execution of a sentence or security measure. But, if the person requested by one state is found or arrested on the territory of another state, whereupon that state has the obligation to deliver that person to the requesting state, that will be the case of passive extradition. The requested state, that is the state in which the person is found, will allow their extradition to the requesting state, under the conditions proscribed by the Convention and the national legislation. The active extradition would be the ‘real’, more common case of extradition. Its process, unlike the

³ The Convention and its protocols were implemented into the Croatian legal system on December 13. 1994.
⁴ Melanija Grgić, RADIONICA; Praktična primjena odredbi međunarodnog kaznenog prava ; Izručenja, Opatija, svibanj/lipanj 2007.
passive one, which is more of a judicial-administrative procedure, is much more complicated, it takes longer for its effects fulfil and, in the end, many more courts and judicial institutions are involved in that process. Considering that Croatia has become a candidate for membership in the EU, we had to adjust our legislation to the legislations of the European states as well as to the *aquis communautaire* of the European Union. The novelty in the extradition process brought on by those changes was the **simplified extradition**, which has for a goal to shorten and speed up the long and complicated process of extradition. In the process of simplified extradition, the surrendered person can give its consent to be delivered to the requesting state as well as to wave its rights from the Article 40, par. 2. which, in coherent with the principle of specialty, states that if the person requested is extradited can only be prosecuted, or penalty executed for the offence for which the extradition was granted (the principle of speciality). After the consent is received, the appropriate competent court grants the extradition, if there are no reasons for a different decision.

3. **Reasons to refuse an extradition request**

The Practice of Croatian international legal assistance has been based on a principle of assistance in suppressing crime with foreign element, which is strengthened through newly adopted laws and bilateral extradition treaties. On the other hand, that principle is limited in a way that extradition requests may be granted if certain requirements are satisfied. As Croatian extradition law is based on international treaties and domestic law, those requirements are provided through those sources of law. It should be emphasized here that the provisions of the Convention have supremacy before bilateral extradition treaties and domestic law which contain some additional provisions and reasons for denial of extradition. In this section, there is an overview of the extradition requirements through the Convention, two additional protocols and ZOMPO which came into force in 2005 in order to make the international legal assistance in criminal matters more efficient. To present an overview of requirements for acceptance of an extradition request in this paper, we will use the theoretical division between material preconditions which are supposed to exist and legal obstacles whose existence forbid extradition.

There are positive and negative preconditions for extradition.

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3.1. Positive preconditions for extradition are: reciprocity, dual criminality and extradibility.

The principle of reciprocity is prescribed as obligatory where there is no extradition treaty to ensure that the requesting country will respect the same request of the requested state in the future, according to the ZOMPO article 17 par 1. The provision of the Convention allows its application only in cases of crimes not covered by the Convention article 2 par 7. It should be noted that its application is advised to narrow the scope of this rule though especially amongst the states which are forming some sort of political or economic association.

The dual criminality principle, which was mentioned before, requires that the crime charged in the requesting state must also be found in the requested state’s legal system. It protects an individual against prosecution in cases when his behavior is not considered a criminal act in the requested state. This principle is used from its most strict form where the identity between the criminal charges is required in both states, to the form where there is no need for identity, but that the underlying facts give rise to a criminal charge in a requested state’s legal system which is an approach of the Croatian extradition law.

The extradibility principle means that extradition is granted only regarding more severe crimes. This principle is proscribed in old treaties by the method of positive enumeration, which is replaced in the new treaties by the method of eliminations.

3.2. The negative preconditions for extradition

The negative preconditions for extradition are related to the person of perpetrator (nationality and asylum), to the nature of crime (political, military and fiscial offences), procedural obstacles and protective effects of rule of speciality.

Obstacles refer to the nature of a crime. Extradition is performed mainly for more severe crimes and it is commonly accepted that those criminal acts are punishable in member countries. While those acts are listed in the Convention and through additional protocols there is also a mutual agreement that the nature of certain offences make the exemption to this rule. In Article 3 of the Convention it is prescribed that exemption refers to the political, military and financial offences and the nature of each offence is being evaluated by the requested state. But, the Convention itself, does not define “a political offence or as an offence connected with a political offence”, but states clearly that: “specifically excludes from the definition of a political offence, military offences, crimes against humanity specified in the Genocide Convention, violations of the Geneva Conventions, and comparable violations of the laws of war. In case of fiscal offences extradition is granted only if the Contracting Parties have so
decided in respect of any such offence or category of offences.”. It became one of the main principles of the international law to deny extradition in cases of political offences. Since the definition of political offences has never been clear, the general principle is that those are the crimes which entitle someone to seek an asylum. It is prescribed in ZOMPO Article 12 item 4 that the evaluation of the nature of the offence for which extradition (or any kind of international cooperation) is requested is under judicial jurisdiction. Purely military offences are also excluded from extradition. As a general rule, extradition is also refused for fiscal offences which were committed with the aim of paying lower taxes or custom duties. Also, the Second Additional protocol in 1978 states that fiscal and custom acts are not excluded if there is a double criminality. Article 12 par 1 item 1 and item 2 of the ZOMPO mentions an exemption of political offence and fiscal crime while item 5 excludes also low level offences.

The principle of speciality is a provision found in most extradition treaties and it states that a person who has been extradited may be prosecuted only for the offense listed in the extradition request and for which extradition was granted. The rule is to ensure that a person is not extradited on a pretext, only to be prosecuted for an offense for which extradition may not be allowed. The Article 14 of the Convention prescribes the rule of speciality which prohibits the prosecution for any crime committed before the extradited person surrendered. Legal obstacles for the extradition include material and procedural ones, the rules of jus cogens and the right to refusal of an extradition request based on the authority of minister. Since Croatian extradition process is divided in two phases: decision on extradition grounds/merits and then on the legal obstacles the application of the jus cogens clause can lead to a refusal of any kind of international legal assistance at any stage, in practice most often based on authority of the ministry of justice.

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6 Military offences are, for example, insubordination or desertion. An ordinary criminal offence (such as rape) committed by a member of the armed forces is not considered a military offence.
7 Subsidy fraud, where illegal payments are obtained from the state by false pretences, for example, is not considered as a fiscal offence. The terms of cooperation under the Schengen Agreement, which will become binding for Croatia, provide for extradition owing to offences in the realm of consumer taxes, value-added tax and customs duties.
9 ZOMPO Articles 53, 55-57
Procedural obstacles might refer to jurisdiction, lis pendens, ne bis in idem or lapse of time.

Jurisdiction over a crime can be invoked to refuse extradition. Article 7 par 1 of the Convention allows a requested state to refuse extradition if the act committed took place, in whole or partly, on its territory or on a place considered as its territory, this considering the problem of aircrafts and ships\(^{11}\). ZOMPO has a different provision in the Article 35 par 1 item 2 in cases of no contract extradition where it is not allowed to surrender if the crime for which extradition is requested took place on the Croatian territory or against a national but that could be bypassed in special circumstances\(^{12}\). Mentioned provisions of ZOMPO and Convention proscribe the possibility /obligation to refuse the extradition request even if there is a possibility that a requested state will be interested in prosecution because the crime took place on “its territory or in a place treated as its territory”. This is also an approach followed in most of Croatian bilateral extradition treaties.

The ne bis in idem principle has been regulated by the Article 9 of the Convention not only in its most common meaning to protect individual against final decisions (res judicata) but it was also applicable to the procedural decisions which had a final character. The ZOMPO prescribes similar provision in ar. 35 par.1. item 5. Mentioned provisions of ZOMPO and Convention proscribe obligatory denial of the extradition request if final judgement has been passed by the competent authorities of the requested state upon the person claimed in the respect of the offence or offences for which extradition is requested.

There is also a ground for denial of the extradition request in a case of lis pendens for the same crime which is prescribed in the Article 8 of the Convention, as well as in the Article 35 Paragraph 1 Item 5 of ZOMPO. While the Convention has this provision as a possibility, the ZOMPO is more strict and forbids extradition in these situations.

As a rule, criminal proceedings that are already pending in the requested state for the same offence take precedence over extradition. Furthermore, an existing conviction for the same offence in the requested state rules out extradition, in accordance with the "non bis in idem" principle.

However, recent development of extradition law tends to widen the application of this rule which has its legal enforcement in the Article 2 of the First Additional Protocol to the Convention signed on 1975. Though the ne bis in idem has been widened in its reach through

\(^{11}\) The limit of application of this rule was set by the Resolution (75) 12 of the Committee of Ministers to member states on the practical application of the European Convention on Extradition

\(^{12}\) Article 36 of ZOMPO
the par. 2 and 3 in the Additional protocol to the Convention signed on 1975, the ne bis in idem remained obligatory only amongst the member states,

**Statue of limitations** forbids extradition because of the lapse of time. According to the Article 10 of the convention extradition could also be refused when, by the law of the requesting state or the requested state, immunity from the prosecution or from the punishment has been acquired because of the passage of time. It is being disputed, though, the competency of the requested state to assess the time limitation for prosecution and punishment by the law of the requesting state. The general principle is to give importance to any “act of interruption or any event suspending time limitation occurring in the requesting state in so far as acts or events of the same nature have an identical effect in the requested state.” Article 35 par.1 item 4 obliges the refusal of an extradition request in those situations. Since there is no strict provision in the Convention whose statues of limitations should apply, Croatian extradition law applies domestic law which is an interpretation according to the old principle of the international law *ejus est interpretari cujus est condere.*

**Non-extradition of own nationals and asylum-seekers.** Before amendments in 2010, Croatian Constitution in Article 9 par.2 permitted the extradition of a Croatian nationals which is repeated in the Article 32 pr1. of the ZOMPO and other bilateral extradition treaties. Similar provision is contained in the Convention’s Article 6 par.1b. According to those provisions the citizenship will be evaluated in accordance with the Croatian national law on citizenship at the time of decision on extradition. The refusal of extradition on this ground was the most important obstacle to develop better regional corporation in criminal matters. One of the most important reason to block signing extradition in the Balkans, and in Croatia, was the extradition of nationals suspected of committing war crimes. After the amendments of the Croatian Constitution in 2010, and mainly under the influence of the future EU membership, Croatia had set a ground for extradition treaties with the neighbour states and for the application of EAW in the future.

There is also a principle aut dedere aut punire which could also weaken this protection of nationals, but, in reality non extradition of its own nationals remained a huge problem in Croatia extradition law. Quite the same effect on a status of extradited person has the right of asylum, which is going to be explained later in this paper.

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As one of the possible bars to extradition is the **identity of a person** whose extradition is requested. Details of the identity in the request must be very specific. The person who is described in the request must be the same one who will be extradited, therefore the extradition request accompanied with the supporting documentation that would help fully identify the person. In case of any problems or uncertainties concerning the identity of the requested person, the process of extradition must be stopped until the uncertainties are cleared. Croatian practice in extradition has just recently dealt with that problem of identification of Darius Antanas Povilaitis Torres, who is a Lithuanian citizen, and his extradition was requested by the Republic of Peru for a criminal proceeding against him on the charge of aggravated drug trafficking, an offence according to the Criminal Code of Peru, for which offence the punishment proscribed by law is 15 to 20 years in prison. In the request it was stated that Peru attends to extradite him further to the Republic of Columbia, since the offences were made on her territory. Peru stated in the warrant from November 17, 2010 of the District office bench warrants, Lima, that the requested person was of 1,80 meters of height with certain difficulty walking. But in the Head bench of the warrants, it was stated that he was of 1,60 m tall, with no mention of any problems walking. The County Court of Split requested specifications concerning his identity from Peru, conducted an expertise of papillary lines taken from Mr. Torres with the ones delivered with the request by Interpol, which proved that he was in the end the requested person by the Republic of Peru, and his process of extradition was continued.

**Jus cogens clause** is another legal ground that allows requested state to deny extradition request. The application of this clause should be restrictive and in accordance with the principles of the international human rights law, mainly respecting the standards of the ECHR. It is prescribed in the article 12 par1 item 3 of ZOMPO, but only as a possibility. One of the procedural obstacles for extradition is the case when judgments are brought without respecting persons procedural rights and safeguards (judgment in absentia, fair trials guarantees not respected). Though in the *Soering v United Kingdom* case the ECHR held that "The Court does not exclude that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country."

15 Case I Kir- 188/11, County Court of Split
16 Decision Kv-76/11 from March 5th 2012., case I Kir- 188/ 11; County Court of Split
17 European Court for Human Rights. Factsheet - Expulsions and Extraditions, Press Unit, 2012
extradition law and only in exceptional cases where there is risk to suffer a flagrant denial of a fair trial rights. A special aspect of fair trial rights is granted by Article 3 of Second Additional protocol of the Convention which entitles the requested state to refuse a extradition requested to carry out a sentence or detention order rendered against him in absentia if, in its opinion, that trial did not satisfy minimum requirements of defense rights when facing criminal charges. But this Article proscribes the possibility of granting the extradtion in above mentioned case if the requesting state gives guarantee that the requested person will have the right to retrial which safeguards the rights of defednat. So, in concrete case, in accordance with the Article 57 Paragraph 4 of ZOMPO, the Croatian Ministry of Justice can grant the extradition upon above mentioned condition.

The legal obstacle for extradition is also the possibility of certain forms of punishment incompatible with the requested state’s legal system: death penalty, torture, inhuman or degrading treatment or punishment. In the case of Soering v United Kingdom, the European Court of Human Rights held that it would violate Article 3 of the European Convention on Human Rights to extradite a person to the United States from the United Kingdom in a capital case. This was due to the harsh conditions on death row and the uncertain timescale within which the sentence would be executed.¹⁸

4. The political character of extradition

The political character of extradition is reflected through the possibility of refusing extradition relying on the clause of public order and the anti-discrimination clause prescribed in Article 12 of ZOMPO, and the asylum as an obstacle to extradition. Article 12, paragraph 1, item 4 of ZOMPO regulates the "anti-discrimination clause" under which "the national authority can refuse a request for international judicial assistance if there can be reasonably assumed that the person whose extradition is requested in case of extradition would be criminally prosecuted or punished because of their race, religion, nationality, membership of a particular social group or their political beliefs, or that her position would be difficult because of one of these reasons." These provisions substantially correspond to Article 3 Paragraph 2 of the European Convention on Extradition from 1957¹⁹.

¹⁸ http://en.wikipedia.org/wiki/Soering_v_United_Kingdom
¹⁹ “The same rule shall apply if the requested Party has substantial grounds for believing that a 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.”
A good example of refusing extradition relying on the clause of public order is the A.A.K. case. A.A.K. is a Russian citizen of Chechen origin, who was arrested in September 2011 at the border crossing Macelj according to the arrest warrant that was issued for him by Interpol in Moscow. He was accused before the judicial authorities in Grozny of helping a terrorist group during 2004, by giving them food and explosive devices which caused the death of a military person. A.A.K. has been living in Austria for the last seven years, where he received asylum in April 2008. As a reason for rejecting extradition of A.A.K. to Russia, Austria has taken into consideration A.A.K.’s claims that he was exposed to systematic torture in the Russian prison. A.A.K. was subjected to extradition proceedings to the Russian Federation by the authorities of Croatia, despite the fact that, due to political persecution, the risk of unfair trial and the suspicion of being tortured in the Russia, he received asylum in Austria. County Court of Zagreb as well as the Supreme Court in the second instance concluded that the fact that A.A.K. has received asylum in Austria because of the risk of an unfair trial and a suspicion of being tortured in Russia does not represent an obstacle to extradition. However the Croatian Minister of Justice issued a decision to reject the extradition of A.A.K. to the Russian authorities because there is a reasonable suspicion that he wouldn't be entitled to a fair trial in his country, due to his national origin and his political beliefs. The reason for this decision of the Minister of Justice, that we strongly support, is that the verdict of the Supreme Court directly violates the regulations on the prohibition of return (non-refoulement) of the Geneva Convention Relating to the Status of Refugees, European Convention on Extradition, the Croatian Law on Asylum, and also the regulation of Art. 3 of the European Convention on Human Rights, as well as other international human rights instruments. 

The principle of non-refoulement was originally prescribed by the Geneva Convention Relating to the Status of Refugees. The Supreme Court has not directly applied Article 33 of that Convention, which is according to the art. 140 of the Croatian Constitution part of internal domestic law. The Supreme Court has neither applied the above mentioned Article 3 Paragraph 2 of the European Convention on Extradition from 1957, in which the principle of non-refoulement was also incorporated. The principle of non-refoulement was incorporated

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20 Zagreb County Court dismissed the examination of conditions specified in Article 12 paragraph 1, item 4 of ZOMPO since the determination of those conditions is, in the opinion of the Court, under the jurisdiction of Ministry of Justice, although the establishment of the aforementioned conditions, is under the jurisdiction of the appropriate national authority.

21 „No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
also in Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman and degrading treatment. From the opinion of the European Court of Human Rights in the verdict Soering v. United Kingdom\textsuperscript{22} it can be clearly concluded that the principle of non-refoulement ratione materiae refers to both asylum and extradition and rationae personae to all persons who are invited to this kind of legal protection.

A good example of asylum as an obstacle to extradition is the case of D.P.V., a citizen of Ukraine and Russia, who was placed in an extradition custody in Croatia, based on an international quest issued by the request of Interpol Moscow. Russia has submitted a request for his extradition to its competent authorities. After the procedure council of the District Court in Dubrovnik issued a decision, stating that the legal requirements for the extradition of D.P.V. to Russia for the purpose of criminal prosecution for aggravated fraud are satisfied, and that decision was upheld by the Supreme Court. But considering that D.P.V. enjoys the status of asilee in the Republic of Croatia, Croatia is as a party to the Geneva Convention Relating to the Status of Refugees, European Convention on Extradition and the European Convention on Human Rights obliged to respect the principle of "non-refoulement" established by them and not to extradite D.P.V. to the country of his origin. Therefore, the Minister of Justice in this case has also issued a decision not to allow extradition of D.P.V. to Russia.

5. The takeover and the referral of criminal prosecution

The takeover and the referral of criminal prosecution is an institution of international criminal assistance\textsuperscript{23} which consists of transfer of criminal prosecution, on the basis of a request, from the competent authorities of the requesting State to the competent authorities of the requested State.

\textsuperscript{22} SOERING v UNITED KINGDOM (Series A, No 161; Application No 14038/88) (1989) 11 EHRR 439, 7th July 1989., par.88: „It would hardly be compatible with the underlying values of the Convention, that 'common heritage of political traditions, ideals, freedom and the rule of law' to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3, would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article."

\textsuperscript{23} Unlike other institutes, where the requested State does not apply its substantive law, here the requested State does not provide assistance solely to achieve the law of the requesting State, but it also applies its substantive and procedural law against the offender, who is related to that State by legal or territorial affiliation.
ZOMPO gives the authority of takeover for the criminal prosecution of an offender who is a Croatian citizen or a person residing in the Croatia for an offense committed abroad, while for an offense committed on Croatian territory it enables the referral of criminal prosecution to a state in which the alien (citizen of a foreign country, stateless persons or refugee) resides. Except in cases of international judicial assistance contracts, the condition for accepting a request for takeover of criminal prosecution is the existence of reciprocity. ZOMPO opens for Croatia the possibility of takeover of criminal prosecution as an alternative to an unallowed extradition. The national judicial body can decide to takeover the criminal prosecution, but for that decision it is necessary to cumulatively meet two assumptions: that the extradition to a foreign country is not allowed, and a statement of a foreign judicial body that it won't prosecute the defendant after the final judgment of the domestic judicial authorities. Referral of criminal prosecution from Croatia to a foreign state is possible if the alien, who is residing abroad, committed an offence in Croatia. Protection of public interests does not allow the referral of criminal prosecution without any restrictions, so it is allowed only for the offenses for which a punishment of imprisonment is up to ten years, which means that for the most serious crimes referral of criminal prosecution is excluded. A further assumption for the permissibility of referral of prosecution to a foreign country is that the requested State doesn't oppose to the takeover of prosecution. Croatia has also implemented legislation in order to cooperate with the established ad hoc International Criminal Tribunal for the Former Yugoslavia. However, although this court has has primacy over national courts, that does not mean that it must prosecute all cases. Therefore, it is possible to refer prosecution to Croatia, and the reasons for that are primarily the large number of cases and the interest of the state whose citizenship the offender possesses or the state in which an offence was committed to prosecute the defendant. International courts are generally interested in high-ranked defendants, and for the others they are opened for referral of jurisdiction to the national courts.

The Norac-Ademi case was the only one that was, based on the Rule 11bis of the Rules of Procedure and Evidence, transferred to Croatia. The indictment against Rahim Ademi was unified with the indictment against Mirko Norac on 30th July 2004. On 2nd September 2004 the Prosecutor has filed a request to the Court to refer that case to Croatia under Rule 11bis. The procedure, which lasted a full year, should, in accordance with the rules, give an answer whether there is a possibility of referral of the case. Based on that proceedings and statements of the defendants that they agree with the referral of the procedure to Croatia, the Referral
Bench concluded that the measures for protection and availability of witnesses in Croatia are adequate to ensure a fair trial, that Croatian courts may conduct a fair trial (nevertheless it ordered monitoring) and that in Croatia there is no death penalty. Therefore, on 14th September 2005, it decided to refer the case to the Croatian authorities which should refer it to the appropriate court. The trials of Norac and Ademi began at the County Court of Zagreb in June 2007 and ended a year later on 30 May 2008. Norac was found guilty of failing to stop soldiers under his command from killing and torturing Serbs. He was sentenced to an additional 7 years imprisonment. A second general on trial, Rahim Ademi, was acquitted of the same charges.

6. Execution of a foreign criminal verdict

Execution of a foreign criminal verdict is a special form of international legal assistance in which, the criminal sanction imposed in the state of trial, is being executed in another country (country of execution), based on the previously completed procedure of taking over the execution of foreign criminal verdicts (for example the recognition of foreign criminal verdicts), or on the basis of transfer of current execution of a punishment or some other criminal sanction\textsuperscript{24}. As with the extradition, for the execution of a foreign criminal verdict, there are assumptions that can be divided into positive and negative\textsuperscript{25}.

In connection with this institute, we are presenting a case from the jurisdiction of the County Court of Bjelovar. Ministry of Justice, integration and Europe of the province of Hessen, Germany sent a request to the Croatian Ministry of Justice (according to the article 2 of the European Convention on the Transfer of Sentenced Persons of 1983), for transfer in order of further execution of sentenced imprisonment punishments in Croatia against Croatian citizen J.M\textsuperscript{26}. The request was related to the condition that the convicted criminal is placed in an institution that is especially insured from attempts to escape because the convict has already tried to escape from prison and was planning another attempt to escape by taking hostages.

\textsuperscript{24} Krapac Davor, International judicial assistance, Narodne novine, Zagreb 2006., pages 135-140

\textsuperscript{25} Positive assumptions are: a) reciprocity b) mutual criminality c) the fact that the convict is a citizen of the state of execution d) legal validity of the foreign criminal verdict e) that at the time of receipt of application in the state of execution the convict still needs to serve in the state of trial at least six months of imprisonment f) the consent of the convict for the takeover of the execution of foreign criminal verdict. Negative assumptions are: a) non-accordance with the principles of public policy of the requested state b) asylum of the convict in the requested state c) the principle of ne bis in idem d) the primary jurisdiction of the requested state

\textsuperscript{26} J.M. was, by three different verdicts of various German courts, sentenced to: aggravated theft within the gang - 6 years of imprisonment, theft - 1 year and 7 months of imprisonment and damage of objects- 2 months of imprisonment.
Convict gave his consent for the transfer to Croatia during the hearing before the Court of First Instance in Straubing. He was at the time of submitting the request serving the sentence imposed against him in a penal institution in Straubing. County Court of Bjelovar dismissed the request of the competent authority of Germany because it didn't consider reasons for the transfer justifiable. In its explanation it stated that that court as the court of the State of execution is obliged to apply punishments in judicial proceedings in a way that the sentenced punishments are replaced with those prescribed for the same offenses, according to the Croatian criminal legislation. Accordingly, the continuation of the imprisonment against the convict can be conducted only under Croatian law on execution of penal sanctions, which, according to the opinion of this Court, makes questionable the strict plan of execution of punishments, which was submitted with the request. The fact that the execution would deviate from the established plan of execution of punishment, may ultimately diminish the chances of a successful resettlement. Moreover the request was related to the condition that the convict should be placed in an institution that is especially insured from attempts to escape, so the realization of such condition could also eventually become questionable.

We'll also mention a case that had a big political connotation and media attention in Croatia, since it refers to Branimir Glavaš, who is a former general of the Croatian army, member of Parliament and the president of a parliamentary political party. In May 2006 Croatian chief prosecutor asked the Parliament to deprive Glavaš of his parliamentary immunity, in order to start formal criminal proceedings in the case. The request was granted and Glavaš was indicted for allegedly giving orders to members of a unit under his command to abduct, torture and murder Serbs in late 1991. In 2009 the Countyt Court of Zagreb found Glavaš guilty of that crimes, and sentenced him to 10 years in prison (the Supreme Court later reduced the sentence to eight years). Glavaš fled the country, to Bosnia and Herzegovina having procured citizenship in that country seven months earlier. The Croatian Ministry of Justice filed a request for his extradition but it was rejected because of Glavaš's Bosnian citizenship. Based on the agreement on mutual execution of criminal sanctions between Croatia and Bosnia and Herzegovina, Court of Bosnia and Herzegovina confirmed the second-instance verdict and Glavaš was arrested and put in prison.

7. European arrest warrant- a new future of Extradition?
Since the traditional system of extradition has over the years shown many faults, especially its complexity and everlastingness, the Council of European Union brought a Framework Decision on June 13 2002, concerning a new institute in international legal assistance in
criminal matters- the European Arrest Warrant (EAW). “The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.”

The European arrest warrant is, as it is stated above, a judicial decision. That is the first difference in comparison to extradition. This means that the judicial power of a state is in charge of issuing a warrant, where in extradition the procedure is dealt through diplomatic channels. The decision of EAW is aimed to an arrest of the seeking person from the member state to which the warrant was given to and the delivery of that person to the state that issued that warrant. The warrant itself holds four obligations to the state it is aimed at- request assistance in search, to arrest, to detain and to deliver the requested person. As for the offences, the EAW cannot be issued for all criminal offences, only if the custodial sentence or a detention order is for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

While the States in extradition require that the offence in question is one punishable by their law as well as by the law of the requesting state, the EAW proscribes the list of 32 criminal offences for which the dual criminality is not requested. The elimination of dual criminality leads to situation in which the State that receives the warrant must execute the warrant even if the offence is not punishable by law in its country. By so, if the person in question would not be surrendered to the judicial authority which issued EAW, the country which received the EAW would not be able to apply the principle aut dedere, aut punire/judicarem due to the fact that offences for which this person was requested are not criminalized by its law. One other difference and novelty of EAW is the States possibility of delivering its own citizens. As mentioned before, one of the main obstacles of extradition is that it excludes states own citizens. By allowing so through the means of the warrant, EAW has encountered some problems with implementation because some Member states, in order to protect their citizens, claim the issue to be unconstitutional. Also, the EAW eliminated obstacles concerning impossible delivery of person when there was a political nature of the offence, and the possibility of refusal of delivery based on the discretionary decision of the Minister- the states have no discretionary powers concerning the warrant, all they have is Framework decision and the actual warrant to rule by.

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28 ibid
8. Conclusion

History has it remembered that the first treaty dealing extradition was signed in 1290 BC between the great pharaoh of Egypt, Ramses II, and the Hittite price Hattushilish I. The treaty applied to the surrender of ‘great men’, which in that case referred to political offenders, and not common criminals. Whilst some principles and treaties concerning extradition have surely changed over time, the act of extradition in whole still, after so many centuries, remains the same. Extradition is still an act of surrender of one person, found in a territory of another state to another state for the purposes of prosecution or enforcement of a sentence. Extradition is still an act of a State, in which the Minister, of Justice in our case, has the final word in granting, or not allowing extradition. Since extradition has somewhat political character, there is a clause in our extradition legislation which allows the extradition request to be dismissed if there is a pending case of asylum, or if it is unclear what punishment will be given to the person being requested and if such is based on the case of their race, religion, nationality and so on. Nowadays, Croatia applies three types of extradition: the active, the passive and the simplified type. But extradition will not be granted in any of those types if some obstructions exist. Some of those obstacles are material and refer to a crime committed, and some are procedural and revolve around the procedure. In the close connection to extradition are also the takeover, the referral of criminal prosecution and execution of a foreign criminal verdict, which are all various types of international legal assistance. Croatia had gained vital experience in the aforementioned due to the highly publicly exposed cases like the case of Norac-Ademi and the case of general Glavaš.

Over the last several years, Croatia has signed several bilateral agreements considering extradition. Among those were the three agreements signed with our close neighbor states, Republic of Serbia, Republic of Macedonia and Republic of Montenegro. All three agreements were signed having in mind the offences of corruption and organized crime. The first that was signed from those three was the Agreement between the Republic of Croatia and Republic of Serbia, on June 29 2010 in Belgrade. Throughout the 36 articles listed in it, it was decided that the extradition will be granted only when, by the law of both states, the sanction or measure proscribed for the criminal offence includes deprivation of liberty in duration of at least one year. Also, extradition for execution of prison sentence or measure which includes deprivation of liberty will be granted only for those criminal offences punishable by the law.

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29 Transnational Fugitive Offenders in International Law: Extradition and Other Mechanisms; Geoff Gilbert; Martinus Nijhoff Publishers; 1998.
of both states and if the duration of the prison sentence or precaution that includes deprivation of liberty of at least 4 months. The Agreement clearly states that it refers only to the offences of organized crime and corruption. Various obstructions to extradition include a problem of asylum, the rule of ne bis in idem, if the criminal offence does not fall into the rule of double criminality, if there is a question of amnesty, if the person whose extradition is requested would have certain problems and discomforts due to their old age, and so on. One interesting detail about this agreement is the possibility of extradition even if the character of the legal qualification of the criminal offence in question occurs - in that case the extradition must be granted by the new qualification as well. Not long after the Agreement with Serbia, Croatia signed the agreement with Montenegro on extradition, on October 1, 2010. The extradition in this agreement follows the rule of the time length mentioned in the Agreement with Serbia adding that if one of the offences listed in the Request does not qualify the that rule, while others do, extradition will nevertheless be granted. The difference between this agreement and the agreement with Serbia is the more detailed list of offences concerning corruption and organized crime for which the extradition of states own citizens is allowed. The rest of the agreement is, more or less, is consistent with the agreement made with Serbia on the same subject. The last that was signed was the Agreement with Republic of Macedonia, on October 31, 2011, and follows the path of the aforementioned agreement with Montenegro, including the Article 7 which prescribes offences of organized crime and corruption as the only ones for which the extradition is allowed. Since it was many times mentioned that extradition is almost always a slow, long and sometimes a political process, in last few years a new institution has risen to the light of international legal assistance - the European arrest warrant. There are many novelties in the process of EAW, its exclusion of the Ministries and diplomatic paths of extradition, but also many questions are yet left unanswered, firstly the question of it being unconstitutional. It is uncertain what other novelties time brings to the area of international legal assistance. But, nevertheless, the process and the ratio of extradition will remain on a high pedestal of ‘great international assistance’.

31 Article 25, ibid
33 Article 8. ibid
34 Krapac, Međunarodna kaznenopravna pomoc 2006, NN
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