Albanian Legal Framework and Case law on Extradition:
Overview and recent Developments

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I. Introduction

Since the beginning of the Twentieth Century, Albania had approved legislation regarding extradition, and entered into international treaties regarding it, with countries such as the United Kingdom and the United States of America. However, only after the year 1990 and the important political and social changes it represented, and especially after the entering into force of the Stabilization and Association Agreement with the European Communities and their Member States, in 2009, extradition in Albania was regulated and applied in a European way and in accordance with modern standards.

II. Development of the Albanian legal framework regarding extradition

After its declaration of independence in 1912, Albania developed the legal framework regarding extradition, by entering into several international agreements. The first treaty on extradition was signed with Greece, on June 25th, 1926. During the same year, treaties were entered into with the United Kingdom and the Kingdom of Serbs, Croats and Slovenes and in 1933 an extradition treaty with the United States was signed. During the period 1944-1990, Albania signed agreements on extradition and mutual judicial assistance on criminal matters with Czechoslovakia (1959), Romania (1960) and Hungary (1960).

After the 1990s, Albania became part of many international organizations, including the Council of Europe, the Organization for Security and Cooperation in Europe, and the North Atlantic Treaty Organization. Albania ratified many conventions and treaties with regard to enhancing cooperation in criminal matters, such as: the European Convention on Extradition and all its four additional protocols\(^1\); the Convention on Cybercrime (ETS no. 185)\(^2\); the United Nations Convention against Transnational Organized Crime and two of its additional protocols\(^3\); the Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

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1 The Convention (ETS no.024) and its two first additional protocols (ETS no.086 and ETS no.098) have been ratified by the Republic of Albania by Law no.8322, dated 2.4.1998. The Third Additional Protocol (ETS no.209) has been ratified by Law no.10426, dated 2.6.2011. The Fourth Additional Protocol (ETS no.212) has been ratified by Law no.117/2013, dated 15.4.2013. The Republic of Albania was the first country to ratify the Fourth Additional Protocol.

2 Ratified by Law no.8888, dated 25.4.2002.

3 Ratified by Law no.8920, dated 11.7.2002.
(ETS no. 198)⁴; the United Nations Convention against Corruption⁵, and bilateral treaties with Kosovo, Italy, Greece, Croatia, Slovenia, Macedonia etc.

III. Main legal acts on extradition

The Republic of Albania has ratified the European Convention on Extradition⁶ and its first two additional protocols, with the following reservations and declarations.

- Relating to paragraph 1 of Article 2 of the Convention, the Albania has no minimum limits for the term of imprisonment for the effect of extradition. This declaration is valid only in conditions of reciprocity.
- Relating to paragraph 1, sub-paragraph “a”, of Article 6 of the Convention, Albania refuses the extradition of its nationals, unless otherwise provided in the international agreements to which Albania is a Contracting Party.
- Relating to paragraph 1, sub-paragraph “b”, of Article 6 of the Convention, Albania includes in the term “nationals” the persons with double nationality, in case either of them is Albanian.
- Relating to paragraph 1 of Article 7 of the Convention, the Albania does not allow the extradition of the persons who have committed offences either in the Albanian territory or outside it, when the offence has injured the interests of the Albanian State or of its nationals, unless it is otherwise agreed with the interested Party. This declaration is valid only in conditions of reciprocity.
- Relating to paragraph 2 of Article 12 of the Convention, the request for extradition must be accompanied always by the original text, or authenticated copy of the applied law.
- Relating to paragraph 2 of Article 19 of the Convention, when a person asked to be surrendered is serving a sentence for another offence, he or she, in the event of extradition, shall be permitted to serve the full sentence in the requesting country. This declaration is valid only in conditions of reciprocity.
- Relating to paragraph 4, sub-paragraph “a”, of Article 21 of the Convention, prior notification is not necessary in cases of transit by air that does not schedule a landing in the Albanian territory.

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⁴ Ratified by Law no.9646, dated 27.11.2006.
⁵ Ratified by Law no.9492, dated 13.3.2006.
⁶ Further referred to as “Extradition Convention”.

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In view of the domestic law, the main legal acts governing extradition, in Albania include: the Constitution of the Republic of Albania, which provides the basic rules regarding extradition and international law; the Criminal Code and the Criminal Procedure Code, that provide rules and procedures, regarding extradition; and Law no.10193, dated 3.12.2009 “On Judicial Relations with Foreign Authorities on Criminal Matters”, as amended7.

**IV. The role of the Ministry of Justice in extradition cases**

In view of the Albanian law, an extradition request may be approved, only if it has been communicated to the Albanian Ministry of Justice. If there is more than one communicated request, the Ministry of Justice defines the order of their review, based on the specific relevant elements of each of them, such as the date of the communication, the gravity of the criminal offence, the place of commission of the offences, the nationality and residence of the requested person, and the possibility of subsequent extraditions to another state from the requesting party. If, in regard of the same offence, the extradition is requested at the same time, by more than one party, it shall be granted to the party, affected by the offence or to the party in whose territory the offence was committed. Further to these, according to the last paragraph of Article 490 of the Albanian Criminal Procedure Code, “the Ministry of Justice may impose other conditions deemed necessary, without overlapping the provisions of international treaties where the Republic of Albania is a party and respective declarations and reservations”.

After reviewing the extradition request, the Ministry of Justice, when it does not reject it, communicates the request together with the supporting documents, to the competent prosecution office and communicates to the requesting party, the eventual requests of such prosecution office. The Ministry of Justice allows the temporal detention of the requested person and also, through the prosecution office, seizes and hands over property, which may be required as evidence, and/or which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the requested person or is discovered subsequently. The Ministry of Justice communicates to the requesting party, the final decision regarding the acceptance or rejection of the extradition request.

The Ministry of Justice is competent to request from a foreign state, the extradition of a proceeded or sentenced person, who must be subjected to a measure that restricts the individual freedom. The Ministry of Justice is competent to decide about the conditions

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7 Further referred to as “Law no.10193”.
eventually imposed by the foreign country to provide the extradition, when they do not run against the main principles of the Albanian rule of law. The proceeding authority is obliged to respect the accepted conditions.

In extradition proceedings, the Ministry of Justice also has a substantial role, in reviewing, together with the court, the existence of the conditions to permit the extradition. Thus, the Ministry of Justice also acts as a guarantee for the State, and its expressed will, to prosecute criminal offence perpetrators.

The role of the Ministry of Justice, as the body authorized for the protection of the interests of the Albanian State in extradition proceedings was highlighted in a recent case. In it, an Albanian citizen, N.S. was being prosecuted for the same criminal fact, in both Albania and Italy. N.S. was requested to be extradited to Italy, in accordance to a detention order, issued by an Italian court, as accused for committing the criminal offence of “criminal organization with the scope of trafficking narcotics”. At the same time, the same person was being prosecuted by the Albanian Serious Crimes Prosecution Office, for the criminal offences of “production and selling of narcotics” and “trafficking of narcotics”. N.S. was under arrest and the criminal proceeding against him, in Albania, was duly registered with the Criminal Offences Register, in accordance with the Albanian law.

After the communication of the extradition request, from the Italian authorities, the Albanian Ministry of Justice, communicated the request to the competent prosecution office and court. The court approved the extradition of N.S. to Italy, as it (the court) was not informed that N.S. was being prosecuted in Albania too. According to the Albanian law, such situation prohibits the extradition. After the sentence of the court, the Ministry of Justice approved the extradition of the Albanian citizen N.S. to Italy.

This case spurred a large debate, not only within the legal community, in Albania, because the extradition of N.S. to Italy prioritized the Italian courts over Albanian ones, regarding the trial of such person. In our view, such case shows a bypass of all legal arguments, by the Ministry of Justice. The Albanian law does not provide for any applicable correcting tool, in view of an “inappropriate extradition”. Such case may only be treated, at a later time, with the recognition of the criminal sentence of a foreign court, in accordance with the relevant legal tools.

V. Main Rules applicable to extradition, in view of the Albanian law

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8 Sentence no.1506, dated 5.12.2017 of the Tirana District Court (Criminal Chamber).
1. Rule of specialty. According to such rule, a person, who has been extradited, may be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order, only for offences committed prior to the communication of the extradition request. This means that the requesting party, shall prosecute the person only for the criminal offence or offences mentioned in the extradition request, and shall sentence only over such offence or offences.\(^9\)

According to Article 14 of the Extradition Convention, as amended by Article 3, of the Fourth Additional Protocol, a person who has been extradited shall not be arrested, prosecuted, tried, sentenced or detained with a view to the carrying out of a sentence or detention order, nor shall he or she be for any other reason restricted in his or her personal freedom for any offence committed prior to his or her surrender other than that for which he or she was extradited, except in the following cases: a) when the Party which surrendered him or her consents. Consent shall be given when the offence for which it is requested is itself subject to extradition; b) when that person, having had an opportunity to leave the territory of the Party to which he or she has been surrendered, has not done so within 30 days of his or her final discharge, or has returned to that territory after leaving it.

On the other hand, referring to Article 490 of the Albanian Criminal Procedure Code and Law no.10193, extradition is permitted by expressed condition that the person subject to it shall not be prosecuted, sentenced or surrendered to another country for a criminal offence which has occurred before the request for extradition and which differs from that which the extradition is provided for. Such requirement shall be not considered when: a) the extraditing party gives expressed consent and the extradited person does not oppose such thing; b) the extradited person, although has been able, has not left the territory of the country he/she is extradited, within 45 days from his/her release or has returned voluntarily to that territory after leaving it.

It should be noted that there are some differences, between the Extradition Convention and the Albanian Criminal Procedure Code, regarding the application of the rule of specialty. First of all, the time limit within which the extradited person has the right to leave the territory of the Party to which he/she has been surrendered is of 45 days in the Code and of 30 days in the Convention. Second, the Code requires the explicit consent of the extradited person, and not only the consent of the surrendering Party. Regarding these

\(^9\) Such rule is defined by Article 14 of the Extradition Convention, Article 490 of the Albanian Criminal Procedure Code and Article 42 of Law no.10193.
differences, in view of the constitutional rules in Albania, stating that international agreements ratified by law, are superior to domestic laws that do not comply with them\textsuperscript{10}, it should be concluded that the Extradition Convention, is superior to the Albanian Criminal Procedure Code, on extradition cases from Albania to a Party of the Convention.

The Minister of Justice allows the extradition in compliance with the rule of specialty. The Minister claims from the requesting party an official confirmation on: a) the fact that the person shall not be prosecuted for an offence committed prior to the extradition; b) the fact that the extradited person shall not be subject to the execution of a sentence or detention order for any offence committed prior to his or her surrender other than that for which he or she was extradited; c) the fact that neither a more serious punishment than the one sentenced, neither the death penalty, shall be applied; d) the fact that the extradited person, if sentenced \textit{in absentia}, is entitled to a retrial; and e) the fact that the extradited person may not be extradited to another country, with a view to the carrying out of a sentence or detention order, nor shall he or she be for any other reason restricted in his or her personal freedom, without the consent of the Republic of Albania, granted before such re-extradition has been allowed\textsuperscript{11}.

According to the Albanian Criminal Code (Article 51) “for minors, who at the time they committed the criminal offence were under eighteen years old, the imprisonment sentence may not exceed half of the term of punishment provided for by law for the criminal offence committed”. The different legal provisions, regarding the lack of halving the imprisonment sentence, for the person requested to be extradited, if such person was a minor at the time he/she committed the criminal offence, is an obstacle on extradition. According to the Albanian Supreme Court, if the foreign legislation does not provide for the halving of the terms of punishment for minors, even if being a minor at the time the criminal offence was committed is a mitigating circumstance, allowing the extradition would be a violation of fundamental human rights of the person requested to be extradited\textsuperscript{12}.

The renunciation of entitlement to the rule of specialty is defined by the Third Additional Protocol to the Extradition Convention. According to Article 5 of such protocol, each State may declare, that the rule does not apply if the person extradited by this State consents to the extradition and expressly renounces his or her entitlement to the rule of specialty. According to the Albanian law, consent and renunciation may not be revoked and

\textsuperscript{10} Article 122 of the Albanian Constitution.
\textsuperscript{11} Article 42 of Law no.10193.
\textsuperscript{12} Sentence no.37, dated 12.2.2014 of the Albanian Supreme Court (Criminal Chamber).
should be given in a judicial hearing, with the presence of both the prosecutor and the person’s lawyer.  

2. **Rule of mutual punishment of offences.** According to this rule the criminal offence should be considered as such, by the law of both countries involved in the extradition procedure.

Relating to paragraph 1 of Article 2 of the Extradition Convention, Albania has no minimum limits for the term of imprisonment for the effect of extradition. On the other hand, according to Law no.10193, extradition abroad shall be granted if: a) the Albanian law provides for the criminal offence a punishment of imprisonment of at least one year; b) the time left of the imprisonment is of at least four months, at the time of the communication of the extradition request; and c) the prosecution or execution of the criminal offence and its punishment has not been prescribed by the law of the requesting state. In view of point “b”, the Albanian Supreme Court, in its Sentence no.304, dated 14.11.2012, ruled that: “clearly the law has set the moment for the start of the calculation of the time left of imprisonment, at the time of the communication of the extradition request. This means that the time left of the imprisonment at the time of the acceptance of the extradition request, is of no consequence”.

What shall happen if the criminal offence is defined in a different way, in the Albanian and the foreign law? Such situation does not affect the rule of mutual punishment. Such rule requires for the offence to be considered as a criminal one by the laws of both the countries involved in the extradition procedure. This means, that the party requested for the extradition is not entitled to verify if the legal definitions are the same.

An issue arises in view of the “preparation for committing a criminal offence”, as such situation, with some exemptions, is not considered a criminal action by the Albanian law. This means, that this situation prohibits the extradition abroad, as there is a lack of mutual punishment, since the Albanian law does not consider the preparation for committing a criminal offence, as an “offence”, in view of the Extradition Convention.

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13 Article 44 of Law no.10193.
14 Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
15 Declaration made by the Republic of Albania in ratifying the European Convention on Extradition.
16 Article 32 of Law no.10193.
3. **Rule of not granting extradition for political offences.** According to paragraph 1, of Article 3, of the Extradition Convention, to point “b”, of Article 11 of the Albanian Criminal Code and to point “a”, of article 491 of the Albanian Criminal Procedure Code, extradition shall not be granted if the offence in respect of which it 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 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\(^{17}\). This means that, political reasons of the requesting party make absolute limit for extradition.

It should be noted that there is no mandatory definition on “political offences”, but international treaties provide for some exclusions, that are not considered to be “political offences”. In any case, the evaluation if an offence is a political one is defined by the requested party, for each specific extradition request.

The taking or attempted taking of the life of a Head of State or a member of his/her family shall not be deemed to be a political offence\(^{18}\). Political offences shall not be considered to include: a) the crimes against humanity; b) the violations of the four 1949 Geneva Conventions; and c) any comparable violation of the laws of war\(^{19}\).

Further to this, as defined by the European Convention on the Suppression of Terrorism, dated 27.1.1977 (ETS no.090), acts of terrorism are not deemed as political offences. Such convention has been ratified by the Republic of Albania with Law no.8642, dated 13.7.2000. The Protocol amending the European Convention on the Suppression of Terrorism, dated 13.2.2003 (ETS no.190), has also been ratified by the Republic of Albania\(^{20}\). In view of these two international acts being part of the Albanian legal system, for the purposes of extradition to Albania from abroad, and abroad from Albania, acts of terrorism shall not be regarded as political offences or as offences connected with a political offence or as offences inspired by political motives.

4. **Rule of no discrimination.** The requested person shall not be extradited if the extradition is deemed to be requested for the person to be subject to persecutions, or discrimination based on race, religion, gender, nationality, political opinions, personal or

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\(^{17}\) Paragraph 2 of Article 3 of the Extradition Convention.

\(^{18}\) Paragraph 3 of Article 3 of the Extradition Convention.

\(^{19}\) Article 1 of the First Additional Protocol to the European Convention on Extradition.

social status or to be subject to torture or to inhuman or degrading treatment or punishment. This rule comes from the Extradition Convention\textsuperscript{21}, and the Albanian legislation follows the same pattern. Point “c”, of Article 11, of the Albanian Criminal Code and point “b”, of Article 491, of the Albanian Criminal Procedure Code, expressly state such rule.

A central role is played by the extradition motives, as they must be evaluated in each case, in close connection with the requesting state and its social and political conditions (status). Also, racial and religious policies and the human rights protection level in that state must be taken into consideration. The personality of the requested person has an important role too. He/she might have expressed ideas that contradict the religious or political doctrines and ideologies, which are in power or are considered to be normal or acceptable, in the requesting party. Also the character of the offence must be evaluated.

There is a lack of Albanian case law referring to the rule of no discrimination. But the Court of Justice of the European Union\textsuperscript{22} has dealt with such rule in cases of extradition. The Republic of Albania as a non-Member State follows with interest the case law of the CJEU.

The CJEU has ruled that when a Member State to which a Union citizen, a national of another Member State has moved, receives an extradition request from a third State with which the first Member State has concluded an extradition agreement, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it. According the CJEU case law, where a Member State receives a request from a third State seeking the extradition of a national of another Member State, that first Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter of Fundamental Rights of the European Union, according to which no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. If the competent authority of the requested Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals in the requesting third State, it is bound to assess the existence of that risk when it is called upon to decide on the extradition of a person to that State. To that end, the competent authority of the requested Member State must rely on information that is objective, reliable, specific and properly updated\textsuperscript{23}.

\textsuperscript{21} For example Articles 3 and 21.

\textsuperscript{22} Further referred to as “CJEU”.

\textsuperscript{23} Petruhhin, C-182/15.
5. The prima facie rule. The judicial review on an extradition request is not a full and complete review of the criminal offence attributed to the requested person. The court decides whether to allow or not the extradition, based on two criteria: 1) the court does not evaluate the existence or non-existence of the charge and does not evaluate the evidence; 2) in the extradition request the requesting state provides the conditions on which the criminal offence was committed, by trying to be as believable and convincing as possible to the requested state, regarding the criminal responsibility of the requested person, but such data are not to be evaluated by the court reviewing the extradition request. If the extradition request refers to the execution of a court ruling or a detention order, such ruling/order is a final one, and it is not subject of review by the court of the requested state. The decision of the requesting state court is considered to be in good faith. The authorities of the requested state may not change the charge, or change the legal definition of the offence, or raise questions on the solution of the case. The verdict of the requesting state court is enough. All this defines the abolition of the prima facie rule.

According to Sentence no.134, dated 7.5.2014 of the Criminal Chamber of the Albanian Supreme Court, Albanian courts must not only review the formal communication of the supporting documents, in view of an extradition request, as defined by the Albanian Criminal Procedure Code and the Extradition Convention. They must also evaluate the effective compliance of the data such documents provide, with the reality of the situation. According to this sentence, “when the evidence clearly does not comply with the data provided by the supporting documents, and there are grounded reasons for the lack of observance of fundamental rights and freedoms, the court may overcome the presumption of the same level of protection of human rights by the requesting state, and prohibit the extradition of Albanian citizens”.

In this view, we must mention a case regarding an Albanian national (Fatjon Kapri), requested to be extradited to Albania from the United Kingdom, after being convicted in absentia by the Albanian courts for the murder in London, of another Albanian national. The requested person opposed the request and the consent to it, given by both the Glasgow Sheriff and the Scottish Ministers, by pointing out the alleged systemic corruption in the Albanian judicial system. The Appeal Court in Edinburg dismissed the appeal. On the contrary, the Supreme Court of the United Kingdom unanimously allowed the appeal, and returned the

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case to the Appeal Court, “for consideration of the question whether Mr. Kapri would suffer a flagrant denial of justice if he were to be extradited to Albania”. According to the Supreme Court, this threshold test is stringent and the European Court of Human Rights has observed it would only be met in very exceptional circumstances, requiring a breach of the relevant right “in the country to which the person is to be extradited which is so fundamental that it nullifies, or destroys the very essence of the right” and “when allegations of corruption are widespread they must be taken seriously”. In reviewing the case the Appeal Court was provided with up-to-date information regarding the corruption status of the judicial system in Albania. It was noticed that “the court heard no evidence whatsoever that an ordinary murder trial, or indeed an ordinary criminal trial of any serious offence, would be affected by judicial corruption” and “if corruption exists to a substantial degree in the criminal justice system, it is relative to the prosecutions of influential political figures, organized criminals or their respective friends or families”. For these reasons the Appeal Court gave it consent to the extradition. Kapri was finally extradited to Albania in 2015.

6. Rule of non-extradition of nationals. As defined by Article 6 of the Extradition Convention, every state has the right to refuse extradition of its nationals. This rule is not mandatory, since states are entitled to act differently, by agreeing in such way in a bilateral agreement. The Republic of Albania has made a declaration regarding paragraph 1, subparagraph “a”, of Article 6 of the Extradition Convention, by stating that it refuses the extradition of its nationals, unless otherwise provided in the international agreements to which Albania is a Contracting Party. The same is stated by Article 491/8 of the Albanian Criminal Procedure Code. The Republic of Albania has given up the assurance of non-extradition of nationals, due to the principle of reciprocity in international relations, by entering into bilateral agreements with the United States, the United Kingdom, Italy and Kosovo.

Albanian nationals that commit a criminal offence abroad and are arrested in Albania shall be prosecuted and judged in accordance with Article 6 of the Albanian Criminal Code, by Albanian courts. The second paragraph of such article provides that: “the criminal law of the Republic of Albania shall also be applicable to the Albanian citizen, who commits a crime within the territory of another country, when that crime is concurrently punishable, unless a foreign court has given a final sentence”.

7. **The non bis in idem rule.** This rule is defined by Articles 8 and 9 of the Extradition Convention. Article 8 states that the requested Party may refuse to extradite the claimed person if the competent authorities of such Party are proceeding against him in respect of the offence or offences for which the extradition is requested. Article 9 allows for the extradition not to be granted, if a final judgment has been passed by the competent authorities of the requested Party upon the claimed person in respect of the offence or offences for which extradition is requested, or if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences. On the other hand, point “d”, of Article 11 of the Albanian Criminal Code states that extradition shall not be granted, “if the person requested to be extradited has been trialed by a competent Albanian court for the same criminal act for which extradition is requested”. The same obstacle is provided by Article 491 of the Albanian Criminal Procedure Code.

Chapter II of the First Additional Protocol to the European Convention on Extradition has modified Article 9 of such convention. According to the added paragraphs, the extradition of a person against whom a final judgment has been rendered in a third State, Contracting Party to the Convention, for the offence or offences in respect of which the claim was made, shall not be granted if the afore-mentioned judgment resulted in his acquittal; if the term of imprisonment or other measure to which he was sentenced has been completely enforced and/or has been wholly, or with respect to the part not enforced, the subject of a pardon or an amnesty; or if the court convicted the offender without imposing a sanction. In accordance to this, a foreign citizen that has committed the criminal offence in his/her country and is located in Albania shall not be extradited if the criminal offence has been subject of an amnesty. The amnesty sentence shall be considered a “final judgment”. This rule is defined also by Article 491 of the Albanian Criminal Procedure Code.

The main issue relating to the non bis in idem rule, is if such rule applies when identical actions in the criminal offences are present (idem factum), when identical legal definitions are present (idem crimen), or when identical values, rights and interests are violated? The CJEU case law\textsuperscript{26} is in favor of the idem factum standard\textsuperscript{27}, meaning that if the actions committed by the author of the criminal offence are the same the non bis in idem rule

\textsuperscript{26} In compliance with Article 54 of the Convention implementing the Schengen Agreement.

\textsuperscript{27} Esbroeck, C-436/04.
applies. Such conclusion has been set on many cases by the CJEU. It has been stated that
the actions, material facts, must be insolubly connected to one another, thus creating a unity
of facts in time and space. The same position has been held by the Albanian case law, in the
recent years. Despite the different legal qualifications of criminal offences, Albanian courts
have focused themselves on the criminal actions as a whole, in compliance with the European
courts case law on extradition requests from Albania.

The Albanian Court of Appeal of Serious Crimes, in a case relating to narcotics trafficking by an Albanian national (L.SH.), from Albania to Greece, stated that the same person, for the same criminal act, had been convicted by the Greek judicial authorities. Such authorities rejected the extradition request of Albania, expressly basing their decision on the non bis in idem rule. In accordance with such position, it was stated that despite the different legal definition of the criminal offence from an objective point of view, the person had committed the same criminal offence as the same criminal action was present.

In a more recent case the same stance was taken, by sentencing that the non bis in idem rule is applicable for the same criminal action. For this reason the court rejected the extradition request for an Albanian citizen to Italy, as he had already served his imprisonment sentence in Albania, for the same criminal fact convicted by the Italian courts.

VI. Extradition, Albania and the European Court of Human Rights

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28 Gasparini, C-467/04; Van Straaten, C-150/05; Kretzinger, C-288/05.
29 With its Decision no.26414, dated 15.6.2012, the Italian Court of Cassation quashed a decision of the Appeal Court of Milan, that had approved the extradition from Italy to Albania of an Albanian citizen, for the execution of a verdict of condemnation with 16 years of imprisonment, given by the Albanian courts, for the criminal offence of “trafficking of minors for prostitution exploitation”. The Court of Cassation rejected the extradition request, since the Albanian citizen (F.Z.) had already been punished by Italian courts for the same “criminal fact”. The Court of Cassation, based on the case law of the European Court of Human Rights, the CJEU and the Inter-American Court of Human Rights, on the non bis in idem rule, stated that: “there shall be “the same fact” when there is the same, natural and historical, identity between the actions judged in the requested state and those judged in the requesting state, for whose the extradition request has been submitted. This is true despite the different legal definition given to such facts by the two states”.
30 Sentence no.16, dated 29.2.2016 of the Albanian Court of Appeal of Serious Crimes.
31 The same criminal fact, “trafficking of narcotics”, was qualified differently: as “export of narcotics” and “import of narcotics”, in the two countries (Albania and Greece).
32 Sentence no.49/486, dated 5.3.2018 of the Durrës District Court (Criminal Chamber).
From the cases involving Albania at the European Court of Human Rights\textsuperscript{33}, two cases deserve to be mentioned and analyzed, as they dealt with the extradition of Albanian nationals: \textit{Rrapo v. Albania}, dated 25.9.2012 and \textit{Izet Haxhia v. Albania}, dated 5.11.2013.

\textbf{VI. 1. Rrapo v. Albania (application no. 58555/10)}

The main legal issues of this case are: i) the effect of the interim measures of the ECHR for the suspension of extradition procedures from a Member State of the Council of Europe, to a non-Member State; ii) the validity of the extradition treaty between Albania and the United States of America, of 1933; iii) is the sentence of an Albanian court of appeal allowing the extradition, to be considered as “final”, though the Albanian Supreme Court may block the extradition; iv) the execution moment of the extradition sentence.

This case relates to the extradition request of an Albanian national that might have been sentenced to death due to the extradition. On 2 July 2010 the applicant applied for a renewal of his American passport at the United States Embassy in Tirana (Albania). In the afternoon of the same day, he was arrested by the Albanian police at the request of the United States Embassy. On the same day, the United States Embassy sent a diplomatic note by which it requested the extradition of the applicant in accordance with Article XI of the Extradition Treaty between Albania and the US. According to the diplomatic note, a warrant for the applicant’s arrest had been issued by a United States judge. The request was approved by both the district court and the court of appeal. None of the courts requested assurances from the United States that the applicant was not going to be sentenced to death. This issue was raised by the applicant in front of the Albanian Supreme Court, but at the time such court reviewed the request, the applicant had already been extradited to the United States, even though the ECHR had issued an interim measure to suspend such procedure.

The applicant alleged a breach of Articles 2, 3 and 34 of the Convention. The ECHR ruled that Albania had taken the obligation of complying with Protocol no.13 of the Convention that stated that no one shall be condemned with the death penalty. According to the ECHR there would have been an infringement of Articles 2 and 3 of the Convention, and of Protocol no.13, in case extradited persons were going to be subject to torture or death penalty. Despite this, in this case, the ECHR stated that there have been no breach of such articles, due to the fact that the United States Embassy in Tirana, had submitted a second diplomatic note (after the extradition of the applicant) by which it stated that the applicant was not going to be condemned with the death penalty, if found guilty of the charges.

\textsuperscript{33} Further referred to as “ECHR”.

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other hand, the ECHR found there was a breach of Article 34 of the Convention, because Albania didn’t respect the interim measure of the Court for the suspension of the extradition, until a final ruling on the application. Finally, the ECHR argued that, for the purposes of the Convention, a final judgment, which has become *res judicata*, is a judgment, which may not be subject to control by a higher instance court and, eventually, quashed.

**Comments:** this case is very interesting as it focuses on the State’s obligation of complying with two different treaties/conventions. For Albania, the first one was the European Convention on Human Rights, and the other one the Treaty on Extradition between Albania and the United States. The Albanian Constitution allows the extradition of Albanian nationals only if there are bilateral agreements on the issue. As mentioned above, the Republic of Albania has given up the assurance of non-extradition of nationals, due to the principle of reciprocity in international relations, by entering into bilateral agreements with the United States, the United Kingdom, Italy and Kosovo.

The Rrapo Case was the reason of the recent changes into the Albanian Criminal Procedure Code. According to such changes, point “c”, of paragraph 3, of Article 462 of the Code, now clearly provides that in extradition proceedings the Supreme Court’s decision is the “final decision”. The same rule applies on requests for the transfer of convicted persons.

The ECHR case law and the Albanian case law, have definitely answered to all the questions raised by the Rrapo Case. First of all, regarding the binding effect of ECHR interim measures on extradition requests, the Court itself clearly stated such effect by holding Albania responsible by not complying with the interim measure. Further to this, the extradition treaty between Albania and the United States was considered to be in force, despite the long period of time from the moment it was entered into\(^{34}\), and almost never applied. The same position was held by the ECHR, the Albanian courts and the Albanian Ministry of Justice. Finally, regarding the effect of the court of appeal sentences in extradition cases, the recent amendments introduced to the Albanian Criminal Procedure Code, provide that such sentences shall be deemed as final and binding (*res judicata*), only after the explicit approval of the Supreme Court.

**VI. 2. Izet Haxhia v. Albania (application no. 34783/06)**

*The main issue arising from this case is the approval of an extradition request, when the final decision sentencing the accused person was conducted in absentia. What are the*

\(^{34}\) The treaty was signed on 1 March 1933 and entered into force on 14 November 1935 after the ratification by both countries.
procedural guarantees that the Republic of Albania must apply in this kind of trials, in compliance with the Second Additional Protocol to the European Convention on Extradition?

After the events of the year 1998 in Tirana (Albania), where a member of the parliament and his bodyguard were shot dead, the applicant went from Albania to Turkey. The prosecutor’s office issued an arrest warrant on the applicant, on suspicion of his involvement in the assassinations. The trial proceedings against the applicant were conducted in absentia. He was represented by a lawyer appointed by his family in accordance with the Albanian Criminal Procedure Code. The district court convicted the applicant in absentia. He was sentenced to twenty-five years of imprisonment. The court of appeal and the Supreme Court, respectively, upheld the district court’s decision. On June 2006, the applicant was arrested in Turkey by the Turkish authorities, on the basis of an arrest warrant issued by the Albanian authorities that had requested the applicant’s extradition.

Based on the European Convention on Extradition, as amended by Article 3 of the Second Additional Protocol, “when a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defense recognized as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defense”. In compliance with this provision the Turkish courts refused to extradite the applicant to Albania.

The applicant alleged that the criminal proceedings and conviction in absentia were unfair within the meaning of Article 6 of the Convention. The ECHR noticed that the applicant had no possibility to submit an appeal within the Albanian Constitutional Court, as the two-year limit for such appeal, had terminated at the time the applicant was notified for his conviction in absentia. Further to this, at the time of the introduction of the complaint, the exhaustive grounds of the Albanian Criminal Procedure Code could not have been relied on to file an application for review of a final decision in absentia. The ECHR agreed with the applicant by granting him the right of a new trial and by condemning the Republic of Albania for the breach of Article 6 of the Convention.

35 The Court stated that: “when an applicant has been convicted in breach of his rights as guaranteed by Article 6 of the Convention, the most appropriate form of redress would be to ensure that the applicant is put as far as
**Comments:** in view of the question raised above, the first procedural guarantee is defined by Article 3 of the Second Additional Protocol to the European Convention on Extradition, where it is stated that the requested party may refuse the extradition, if and when in the opinion of such party the proceeding leading to a judgment rendered *in absentia*, does not satisfy the minimum rights of defense recognized as due to everyone charged with criminal offence. The second procedural guarantee comes from the recent amendments regarding proceedings and judgments *in absentia*, to be found in the Albanian Criminal Procedure Code. With the scope of guaranteeing a due process, the amended Article 450 of the Code, provides that when the requested state has allowed the extradition to Albania, with the condition of a retrial of the trial *in absentia*, Albanian courts are obliged to perform such retrial, in accordance with the rules regarding the review of a final judgment.

**VII. Albanian Constitutional Court case law on extradition**

The Albanian Constitutional Court case law regarding extradition is composed by sentences no.21, dated 29.4.2010; no.32, dated 10.7.2013; no.4, dated 5.2.2014 and no.44, dated 19.6.2017. According to such case law:

1) there shall be a violation of the right to a due process and a breach of the international obligations taken by the Albanian State, in view of the European Convention on Extradition and its additional protocols, if the Albanian courts do not retrial the accused person, being previously tried *in absentia*;

2) the Albanian Parliament has approved Law no.9871, dated 11.2.2008 “On the ratification of the agreement between the Republic of Albania and the Republic of Italy, as an addition to the European Convention on Extradition, dated 13 December 1957, and the European Convention on Mutual Assistance in Criminal Matters, dated 20 April 1959, with the scope of facilitating their application”. According to such agreement, entered into force on 1.8.2011, the two states as contracting parties have recognized the reciprocal criminal jurisdiction of their judicial authorities, on each-other’s nationals (citizens). This has brought a reciprocal cession of state sovereignty in criminal matters, over nationals located in the other state;

3) the agreement between Albania and Italy does not provide for a reservation on prohibition of extradition on persons convicted before the entering into force of the

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*possible in the position in which he would have been had this provision been respected. The most appropriate form of redress would be trial de novo or the reopening of the proceedings if requested“* (paragraph 70).
agreement. The rule of retroactivity of law does not apply to international agreements and treaties, but only to domestic law on criminal offences and their punishment. This rule must be observed by the court only if there has not been a final decision on the case yet. This means that the rule does not apply on final decisions of foreign courts that have to be duly executed;

4) the Republic of Albania may not refuse the extradition of a foreign citizen, if there are no reliable reasons to believe that such person shall be subject to discrimination, or be punished on political reasons or on other reasons prohibited by international and national law on extradition.

VIII. Conclusions

1. The legal framework of the Republic of Albania on extradition is complete, and is based on the relevant conventions of the Council of Europe.

2. In accordance with Article 70 of the Stabilization and Association Agreement, Albania is on the way of aligning its legislation, including extradition one, with the EU acquis.

3. Albanian court decisions regarding extradition and transfer of convicted persons shall be deemed to be “final” only after the Supreme Court has ruled over the case.

4. The application of the non bis in idem rule, by Albanian courts on cases regarding extradition, follows the idem factum criteria.

5. When the requested state has allowed the extradition to Albania with the condition of reviewing the trial in absentia, Albanian courts are obliged to perform such retrial, in accordance with the rules regarding the review of a final judgment.

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9. Albanian Criminal Procedure Code


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