

EXTRADITION IN THE NEW CRIMINAL AND CRIMINAL PROCEDURE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

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Abstract: The novels of the current criminal and criminal procedure legislation of the Republic of Kazakhstan in the field of extradition of perpetrators, the transfer of convicted persons, as well as the fulfillment of the instructions of a foreign country, are analyzed in this paper. The noted novelties allow talking about the trends in the development of Kazakhstan's international cooperation in the field of criminal justice. The authors noted that the institution of extradition has been little studied in the domestic and foreign scientific literature. The problems of the development and improvement of the institution of extradition in theory are generally considered in the framework of international law and national criminal law and procedure, and the grounds and conditions for the extradition of the criminals in practice are considered under international treaties or at the discretion of the country. The authors believe that under the conditions of the current geopolitical situation, Kazakhstan needs to develop and to strengthen the international cooperation with other countries in order to protect the national security and the rights and freedoms of citizens.

The purpose of this study is to research the current state of the institution of extradition in Kazakhstan, to study the matters of the development of the international cooperation with foreign law enforcement agencies and special anti-crime services in the field of extradition of perpetrators, and to analyze the problems that impede the improvement of anti-crime measures.

Keywords: Extradition; extradition of criminals; transfer of convicts; international cooperation in criminal proceedings; international treaties of the Republic of Kazakhstan on the provision of legal assistance in criminal matters; fulfillment of instructions of a foreign state.

INTRODUCTION

The transition from the mobilization economy with the administrative command system of management to a free market economy generates, as a rule, acute problems, including poverty and unemployment, forming the basis for crime, drug addiction, and alcoholism. The role of the economic growth in the development of a country is extremely significant, as the lack of it makes the protection of the Kazakhstan's society from corruption and crime impossible. During the first years of Kazakhstan's independence, the priority task was to strengthen its foreign policy in the near abroad and the economic integration with the post-Soviet countries like Azerbaijan, Armenia, Belarus, Kyrgyzstan, Russia, Tajikistan and Uzbekistan, since they have been of high importance for the Republic from a geopolitical point of view. In the

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context of the geopolitical situation in the world and the globalization of the world processes that contribute to the emergence of new challenges and threats, primarily for the CIS countries, the increasing migration flows and the expansion of the field of influence of the criminal groups that go beyond the borders of the country, the joint efforts of all countries are required in combating the crime.

As a full-fledged member of the world community, having recognized the priority of human rights and freedoms, and having assumed the international obligations, the Republic of Kazakhstan expressed its readiness to build a democratic society and a lawful country, and also to maintain peace and security. According to the legislative base of the Republic of Kazakhstan, the international legal aspects of its development are:

- involvement of the country in the world integration processes;
- cooperation with the international organizations, entailing political, legal and socio-economic benefits for the Republic of Kazakhstan;
- updating of the legislative base of the Republic of Kazakhstan in line with the international obligations and international standards in the field of protection of rights, justice and the penitentiary system;
- dealing with the problems of disarmament, ecology, human trafficking, economic contraband, illicit manufacturing and trafficking of weapons, terrorism, ethnic and religious extremism, organized crime, cybercrime, and corruption;
- creation of a legal framework for the bilateral cooperation with foreign law enforcement agencies and special anti-crime services.

The main directions for the development of the national legal system of the country for the period up to 2010 were identified, and the basic principles of the domestic and foreign activities of the country were approved by the first strategic document – the Concept of Legal Policy of the Republic of Kazakhstan, adopted by the Presidential Decree No. 949 of September 20, 2002. The modernization and unification of the legislation, and the convergence of the legal systems were the main result of the implementation of the conceptual provisions of the state legal document that ensured sustainable socio-economic development of the state and increased the competitiveness of the national legal system. A significant update of the national legislation was performed during the years of independence of Kazakhstan.

In the Concept of Legal Policy of the Republic of Kazakhstan, the Head of State of the Republic of Kazakhstan has clearly indicated the existence of the need to specify the norms of legislation related to the search for various categories of persons (criminals, persons who flee from investigation, inquiry and justice, persons evading the execution of the judicial acts, including alimony, the missing; civil defendants, other wanted persons) and participation of all interested state bodies in it. It was noted that the prevention of crime, the offensiveness in combating the crime, the

improvement of the operational-search activity, the adequate response to the actual operational situation, the increase in the level of information support and analytical work, and the expansion of the international cooperation should become the priority directions (On the Concept of the Legal Policy of the Republic of Kazakhstan”: Decree of the President of the Republic of Kazakhstan No. 949, 2002).

Among the priority directions of international legal development specified in the Concept of Legal Policy of the Republic of Kazakhstan are the development and conclusion of the bilateral international agreements on legal assistance in criminal, civil and administrative cases, the extradition of criminals, the exchange of the operational and search, scientific and technical and statistical information, ensuring the information security, as well as the coordinated activities and special operations, mutual internships and training of the specialists. It also seems advisable to take measures aimed at ensuring the participation of the state in the international agreements with the countries-participants of the Commonwealth of Independent States (CIS), the Eurasian Economic Community (EurAsEC) and the Central Asian Economic Community (CAEC) and others on extradition, legal assistance in criminal cases, the reception (transfer) of the criminal prosecution, and joint combating the most dangerous manifestations of crime (On the Concept of the Legal Policy of the Republic of Kazakhstan”: Decree of the President of the Republic of Kazakhstan No. 949, 2002).

In this regard, the member countries of the Commonwealth of Independent States have developed a clear mechanism for the implementation of the interstate program of joint measures on combating the crime, and improving cooperation in the field of mutual protection of the information and legal support in civil, family and criminal cases. The member countries of the Commonwealth of Independent States, including Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, proceeding from the desire to provide their citizens and persons living in their territories with legal protection, paying the attention to the development of the international cooperation in the field of legal support in civil, family and criminal cases, have concluded the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases. The Convention was concluded on January 22, 1993 in Minsk and is most often referred to in practice as the Minsk Convention (On the Ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases”: Resolution of the Supreme Council of the Republic of Kazakhstan, 1993).

First and foremost, the Minsk Convention provides for the provision of legal protection to individuals and legal entities of the countries parties to the Convention, as well as the right to unimpeded production before courts, prosecutors and other human rights institutions, the competence of which includes civil, family and criminal cases, the right to appear in them, to commence suits, to bring claims

and to perform other procedural actions in the territory of the above-mentioned countries.

Secondly, the citizens of the participating countries and the persons residing in the territories of the respective participating countries enjoy the legal protection in all the contracting countries on the same grounds, conditions and in the same manner as the citizens of the participating countries in whose territory they are located; they are granted certain benefits, and are exempt from payment and reimbursement of court and notary fees and costs.

Thirdly, the Minsk Convention regulates the relations between the signatory countries to the Convention. Pursuing the same goals and priorities, Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Ukraine have signed a new version of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, held in Chisinau on October 7, 2002. In practice, this Convention is referred to as the Chisinau Convention and is designated in the international law as the normative legal act following the Minsk Convention – “*lex posterior*”.

According to Art. 120 of the Chisinau Convention, regulating the procedure for its entry into force, the Convention is subject to ratification and shall enter into force on the thirtieth day after the date of impoundment of the third instrument of ratification with the depositary. For a state that has deposited its instrument of ratification with the depositary after the entry of the Convention into force, it shall enter into force on the thirtieth day after the impoundment of its instrument of ratification with the depositary (“On the Ratification of the Convention on legal Assistance and Legal Relations in Civil, Family and Criminal Cases”: Law of the Republic of Kazakhstan No. 531, 2004). The date of impoundment of the instruments of ratification determines the procedure for entry of the Convention into force for the participating countries:

1. The Republic of Belarus – was deposited on August 1, 2003;
2. The Republic of Kazakhstan – was deposited on March 29, 2004;
3. The Kyrgyz Republic – was deposited on September 2, 2004;
4. The Republic of Armenia – was deposited on January 21, 2005;
5. The Republic of Tajikistan – was deposited on April 18, 2005.

The Chisinau Convention was ratified by the Kazakhstan Law No. 531 of March 10, 2004. For Kazakhstan, the Convention entered into force on April 27, 2004, for Belarus – on April 27, 2004; for Azerbaijan – on April 27, 2004; for Kyrgyzstan on October 1, 2004, for Armenia – on February 19, 2005; for Tajikistan – on May 17, 2005. At the same time, the ratification of the Chisinau Convention and the impoundment of the instrument of ratification mean that the Minsk Convention ceases to operate in relations among the signatory countries of the Convention, which have signed and recognized it. When signing the Chisinau Convention,

a separate opinion was expressed by Azerbaijan and a reservation was made by Ukraine.

The Minsk and the Chisinau Conventions have the same object and subject of legal regulation, the common goals and tasks, the standard structure and content. Their content includes the issues related to the legal protection of individuals and legal entities residing or located in the territory of a signatory country to the Convention and related to the provision of the mutual legal assistance in civil, family and criminal cases in the amount, extent, form and type, based on specific circumstances, interests of justice and society as a whole, in accordance with the domestic law of the signatory country and the provisions of the Convention. The Chisinau Convention defines the procedure for appealing against the actions of officials and compensation for the harm inflicted; it establishes the measures to ensure the confidentiality of the fact of obtaining and maintaining the instruction for rendering legal assistance and the data obtained as a result of its execution, it provides for the possibility of the prosecutor's participation in the civil process, it also defines the matters of execution of the court decisions on collection of fines, confiscation of property and proceeds from criminal activity, the content and form of the instruction for rendering the right and many other issues.

Thus, the following procedural actions under Article 577 of the Criminal Procedure Code of the Republic of Kazakhstan are the forms of international cooperation in the field of criminal legal proceedings in the course of rendering of the legal assistance in criminal cases to the competent authorities of the foreign countries with which the Republic of Kazakhstan has concluded the international treaty:

- the delivery of documents,
- the execution of certain procedural actions,
- the criminal prosecution,
- the extradition of persons,
- the temporary extradition of persons,
- the transit transportation, the temporary transfer of the persons,
- the transfer of the convicts and the persons suffering from mental disorders, to whom the compulsory measures of a medical nature were applied,
- the recognition and enforcement of the sentences (The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 231-V ZRK, 2014).

The object of the study is the system of social relations, developing between the subjects of the international law, represented by the criminal prosecution bodies and the courts, when raising the problem of possibility of fulfillment of the international obligations in the field of legal assistance in criminal matters, the features of these

relations, as well as the improvement of the standards of the institution under consideration, the improvement of their quality and efficiency.

The methodological basis of the study is expressed by the fundamental provisions of the dialectical method of cognition of the objective reality. The general scientific and special methods of cognition of the social and legal phenomena are used in this study, the methods of analysis, synthesis, logical, structural and system ones are applied.

The theoretical basis of the study is the philosophical and legal views of the outstanding theoretical scientists.

The normative basis of the study is the bilateral international agreements and the multilateral international conventions in the field of international cooperation in the sphere of legal assistance in criminal cases, as well as the regulatory legal acts of the national legislation, regulating the issues of extradition of the perpetrators for criminal prosecution, the transfer of the convicted persons for execution.

The degree of scientific elaboration of the theme: Addressing the Minsk and the Chisinau Conventions, the international agreements of the Republic of Kazakhstan, the national criminal and criminal procedure legislation of the Republic of Kazakhstan, it should be noted that there is no specific definition of the term “extradition”. The problems related to the terminology, the lack of clarity in the correct understanding of extradition, the discussions on the correlation or delineation of the terms “extradition of criminals”, “extradition of perpetrators” and “transfer of convicted persons” are often observed in the legal literature of recent years. Various terminologies are used by the substantive and procedural laws of Kazakh legislation. For example, the legislator in Art. 9 of the Criminal Code of the Republic of Kazakhstan uses the term “extradition of perpetrators” while in all norms of the Criminal Procedure Code of the Republic of Kazakhstan, the term “extradition of persons” is used. (The Criminal Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 226-V ZRK, 2014). Explaining some of the concepts contained in the Criminal Procedure Code of the Republic of Kazakhstan, the legislator gives the following definition in Article 7 of the Criminal Procedure Code of the Republic of Kazakhstan: “extradition of a person (extradition) is the extradition to a state of a person wanted for criminal prosecution or execution of a sentence” (The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 231-V ZRK, 2014).

RESULTS AND DISCUSSION

There are some problems related both to the clarification of the terminology and also to the definition of the legal nature of the institution of extradition of criminals. No unity has been reached by now in the opinion on the branch of law, the subject of

legal regulation of which are the issues of extradition of criminals: the international, national, inter-industry, material or procedural law.

The theory of the criminal and criminal procedure law also lacks the unambiguous understanding, and the opinions of the scientists differ. One group of authors considers the concepts of surrender and extradition homogeneous; the second group of authors sees a difference between them. Without going into the polemics of this issue, one should assume that extradition is an international term that, in Latin translation, implies the extradition of a perpetrator by one state to another in order to resolve the problem of criminal prosecution or execution of a verdict of a foreign court, or for the purposes of serving of the sentence. The extradition of foreign citizens and stateless persons is possible only in cases stipulated by bilateral international treaties or conventions concluded between the member countries, and in cases of their absence on the basis of the principle of “reciprocity” that is valid in the international law and widely applied in practice or by the legislative acts of the member country or at the discretion of the state. On this basis, it is necessary to believe that the problems of extradition are related to the norms of the international law.

The requested state, as a rule, after adoption of a decision on extradition, proceeds to organizational procedures for the transfer and transition of the criminal. This, in particular, is indicated by Article 594 of the Criminal Procedure Code. In this regard, it should be noted that, being the institution for extradition of criminals the content of extradition includes the actions related to the transfer of a criminal to a foreign state. Therefore, we are inclined to support the opinion of L.N. Galenskaya that “the extradition of criminals is an act of legal assistance carried out in accordance with the provisions of special treaties and norms of the national criminal and Criminal Procedure Legislation, including the transfer of the criminal to another state for trial or for the execution of the sentence” (Galenskaya 1972).

Now we would like to classify the extradition on one or another ground. So, depending on the subject of the person being extradited, the following types of extradition can be distinguished:

- of a person who is a citizen of the Republic of Kazakhstan;
- of a foreign citizen;
- of stateless persons.

Depending on the purpose of extradition:

- for the criminal prosecution and criminal proceedings;
- for criminal justice administration;
- for execution of a legally enforceable court sentence.

Depending on the legal relations governing the extradition, it is possible to distinguish:

- the extradition upon request on the basis of bilateral international treaties or multilateral conventions;
- the extradition at the request of any foreign state.

The general provisions on the extradition of perpetrators, the grounds and the limits of their criminal liability are defined in Article 9 of the Criminal Code of the Republic of Kazakhstan, which are the subject of the substantive law. In accordance with Part 1 of Article 9 of the Criminal Code of the Republic of Kazakhstan, the citizens of the Republic of Kazakhstan, who committed a criminal offense in the territory of another state, shall not be extradited, unless otherwise established by the international treaty of the Republic of Kazakhstan. This provision follows from Paragraph 1 of Article 11 of the Constitution of the Republic of Kazakhstan, which states that a citizen of the Republic of Kazakhstan cannot be extradited to a foreign state, unless otherwise established by the international treaties of the Republic of Kazakhstan (The Constitution of the Republic of Kazakhstan (with amendments and additions introduced by the Laws of the Republic of Kazakhstan as of October 7, 1998 No. 284-I, No. 254-III of May 21, 2007, No. 403-IV of February 2, 2011), 1995). Thus, it is possible that in cases provided for by the international treaties of the Republic of Kazakhstan, a citizen of Kazakhstan may be extradited to a foreign state. At the same time, this provision does not exclude the criminal liability of citizens of the Republic of Kazakhstan who committed a criminal offense outside the Republic of Kazakhstan under the criminal legislation of the Republic of Kazakhstan, if the act committed by them is recognized as a criminal offense in the state where it was committed, and these persons were not convicted in another state.

The above provision, in accordance with Part 1 of Article 8 of the Criminal Code of the Republic of Kazakhstan, can be applied irrespective of the state where the crime was committed, both against the citizens of the Republic of Kazakhstan and stateless persons, permanently residing in the territory of the Republic of Kazakhstan, if they committed a terrorist or extremist crime or crimes against the peace and security of mankind and otherwise is established by the international treaty of the Republic of Kazakhstan. The refusal to surrender to a foreign state a citizen of the Republic of Kazakhstan, a foreign citizen or a stateless person who committed a crime in the territory of the requesting state, is the right of the requested foreign state as opposed to an obligation. Article 61 of the Constitution of the Russian Federation in categorical form, under no circumstances, can expel a citizen of the Russian Federation outside the Russian Federation or extradite to another state (The Constitution of the Russian Federation (taking into account the amendments introduced by the Laws of the Russian Federation on Amendments to the Constitution of the Russian Federation No. 6-FKZ of December 30, 2008, No. 7-FKZ of December 30, 2008, No. 2-FKZ of February 5, 2014, No. 11-FKZ of July 21, 2014), 1993). Thus, unlike the Republic of Kazakhstan, the Russian Federation guarantees its citizens full protection beyond its borders.

Part 2 of Article 9 of the Criminal Code of the Republic of Kazakhstan provides only the possibility of extradition of foreign citizens and stateless persons committed a crime in the territory of another country and located in the territory of the Republic of Kazakhstan. Foreign citizens and stateless persons can be issued to the requesting foreign state for the purposes of criminal prosecution or sentence service in accordance with the international treaty of the Republic of Kazakhstan on the basis of the principles of reciprocity. In accordance with Paragraph 23 of the Instruction on the Organization of Prosecutor's Supervision over the Application of the Laws in the Implementation of International Legal Cooperation, in the absence of an international treaty with the requesting foreign state, it is necessary to indicate in the request (instruction, petition) the guarantees of the authorized person to provide similar legal assistance when applying the Republic of Kazakhstan with a similar request ("On Approval of the Instruction on the Organization of the Prosecutor's Supervision over the Application of Laws in the Implementation of the International Legal Cooperation": The Order of the Prosecutor General of the Republic of Kazakhstan No. 166, 2014). However, in the case of offenses committed by foreigners and stateless persons permanently not residing in the Republic of Kazakhstan, which are directed against the interests of the Republic of Kazakhstan, and in cases provided for by the international treaty of the Republic of Kazakhstan, in case they have not been convicted in another state, they are not subject to extradition and are to be brought to criminal liability under the criminal legislation of the Republic of Kazakhstan.

Kazakhstan may extradite a criminal to the requesting foreign state in case of provision by the latter of the guarantees of non-application in respect of the criminal of any torture and violence, other cruel or degrading treatment or punishment, and the death penalty, unless otherwise provided for by the international treaties of the Republic of Kazakhstan. In Kazakhstan, by the Presidential Decree No. 1251 of December 17, 2003, the indefinite moratorium on the imposition of the death penalty was introduced (On the Introduction of the Moratorium on the Death Penalty in the Republic of Kazakhstan": The Decree of the President of the Republic of Kazakhstan No. 1251, 2003); therefore, by transferring the offender, Kazakhstan requires the requesting state to guarantee that the death penalty will not be applied to the extradited person. The death penalty in the Criminal Code of the Republic of Kazakhstan is "the exceptional measure of punishment", which is replaced by a new type of punishment, such as "life imprisonment". The death penalty in the new Criminal Code of the Republic of Kazakhstan in 2014 is provided for in 17 offenses, it can be applied for the terrorist crimes involving the death of people, as well as for particularly serious crimes committed in wartime, with the granting of the right of the sentenced person to intercede a mercy:

1. Part 2 of Article 160 "The planning, preparing, beginning or conducting an aggressive war";

2. Part 2 of Article 163 “The use of prohibited means and methods of warfare”;
3. Part 2 of Article 164 “The violation of the laws and customs of war”;
4. Part 2 of Article 168 “The genocide”;
5. Part 4 of Article 170 “The mercenaries”;
6. Part 3 of Article 175 “The state treason”;
7. Article 177 “The encroachment on the life of the First President of the Republic of Kazakhstan – the Leader of the Nation”;
8. Article 178 “The encroachment on the life of the President of the Republic of Kazakhstan”;
9. Article 184 “The sabotage”;
10. Part 4 of Article 255 “The act of terrorism”;
11. Part 4 of Article 437 “The disobedience or other failure to comply with the order”;
12. Part 4 of Article 438 “The resistance to the superior or forcing him to break his official duties”;
13. Part 4 of Article 439 “The violent actions against the superior”;
14. Part 4 of Article 442 “The desertion”.
15. Part 2 of Article 443 “The evasion or refusal to carry out military service”;
16. Part 3 of Article 444 “The violation of the rules for carrying out the combat duty”;
17. Article 455 “The surrender or leaving of the means of war to the enemy”.

And, finally, the competent state body of the Republic of Kazakhstan, before making a decision on the extradition of the perpetrator, establishes the identity of the person being extradited, and also in accordance with the Law of the Republic of Kazakhstan of December 4, 2009 “On refugees” (“On Refugees”: The Law of the Republic of Kazakhstan No. 216-IV, 2009) it ascertains the availability of the status of refugee seeking the asylum in the Republic of Kazakhstan.

Kazakhstan may extradite a perpetrator to a requesting foreign state for the purposes of criminal prosecution, if the state provides sufficient data confirming the guilt of the perpetrator to be extradited. For example, a certified copy of the decision on determination of the preliminary qualification of the act committed by the suspect, the indictment, the decision of the investigating judge or the court on the detention of the person in custody.

Kazakhstan may extradite the perpetrator to the requesting foreign state to enforce the sentenced judgment, upon providing by the latter of a copy of the verdict with a certificate of its entry into legal force in relation to the extraditable perpetrator.

The procedural order and special conditions for the extradition of the criminals are regulated by the Criminal Procedure Legislation of the Republic of Kazakhstan, which reproduced the above provisions in more detail.

Thus, in the case of extradition of a person, the country extractor must adhere to the following conditions:

- at least one of the crimes has been committed by the person for which the penalty is provided in the form of imprisonment for a term of not less than one year, or the person is sentenced to imprisonment and the unexpired term is not less than six months;
- the person against whom an extradition request is made has committed an offense in the territory of the requesting state;
- the person has committed the crime against the interests of the requesting state;
- the person to be extradited has the citizenship of the requesting state.

Thus, in accordance with Article 590 of the Criminal Procedure Code, the extradition can be rejected if:

1. the person, against whom the request for extradition has been received, is the citizen of the Republic of Kazakhstan and the international treaty of the Republic of Kazakhstan concluded with the requesting party does not provide for the extradition of its own citizens;
2. the act that served as the basis for the request for the extradition of the person is not recognized as a crime in the Republic of Kazakhstan;
3. the crime, for which the extradition is requested, is not punishable by imprisonment in the Republic of Kazakhstan;
4. the person, against whom the request for extradition was received, had been granted asylum in the Republic of Kazakhstan;
5. the person has already been sentenced for the same offense and the verdict has entered into legal force or the proceedings on the case have been terminated;
6. as of the time of receipt of a request for extradition, the criminal prosecution under the legislation of the Republic of Kazakhstan cannot be commenced or the sentence cannot be executed because of the expiration of the statute of limitations or on a different legal basis;
7. there are reasons to believe that a person, against whom the request for extradition was received, may be at risk of being tortured in the requesting party, or his/her health, life or freedom are endangered by race, religion, nationality, citizenship, belonging to a particular social group or political beliefs, except in cases stipulated by the international treaty of the Republic of Kazakhstan;

8. the act in connection with which the extradition is requested (in accordance with the legislation of the Republic of Kazakhstan) is prosecuted only as a private prosecution, unless otherwise stipulated by the international treaty of the Republic of Kazakhstan concluded with the requesting party;
9. the act in connection with which the extradition is requested is referred under the legislation of the Republic of Kazakhstan to military crimes, unless otherwise provided by the international treaty of the Republic of Kazakhstan concluded with the requesting country;
10. the central body of the foreign state did not provide the additional materials or data at the request of the Prosecutor General's Office of the Republic of Kazakhstan, without which it is impossible to take a decision on the request for extradition;
11. the extradition of a person is contrary to the obligations of the Republic of Kazakhstan under the international treaties of the Republic of Kazakhstan;
12. there are other grounds provided for by the international treaty of the Republic of Kazakhstan (The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 231-V ZRK, 2014).

Pursuant to Part 2 of the same Article, the extradition may be rejected if the crime in connection with which the extradition is requested was committed in the territory of the Republic of Kazakhstan or abroad, but it was directed against the interests of the Republic of Kazakhstan (The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 231-V ZRK, 2014).

The criminal prosecution body, proceeding the criminal case, applies for the extradition of the person who committed the crime in the territory of the Republic of Kazakhstan and left the territory of the Republic of Kazakhstan, to the Prosecutor General's Office of the Republic of Kazakhstan, providing it with the necessary documents. The Prosecutor General's Office of the Republic of Kazakhstan, in turn, in the presence of the grounds provided for by the international treaty of the Republic of Kazakhstan, applies to the competent authority of the foreign country with the request for the extradition of the person to the Republic of Kazakhstan.

The application for the extradition of a person shall be drawn up in writing and must contain:

1. the name of the body in charge of the criminal case;
2. the surname, name, patronymic (if any) of the suspect (convicted person), date of birth, citizenship details, photographs;

3. the statement of the actual circumstances of the crime committed with the text of the law providing the liability for this crime, with mandatory indication of the sanction;
4. the information on the place and time of the effective conviction, or the decision on the qualification of the act committed by the suspect.

An application for the extradition of a person must be accompanied by:

1. the certified copies of the decision to determine the preliminary qualification of the act of the suspect, the indictment, the decision of the investigating judge or the court on the detention of the person, if the extradition is requested for criminal prosecution;
2. a copy of the verdict with a certificate of its entry into legal force, if the extradition is requested for execution;
3. the extracts from the Criminal Code of the Republic of Kazakhstan containing the articles based on which the crime was qualified and the statutory limitations provided thereon;
4. the conclusion of the authorized body of the Republic of Kazakhstan on the citizenship of the person whose extradition is requested;
5. a certificate of the part of the unserved punishment if the extradition of a person, who has already served a part of the sentence imposed by the court, is requested;
6. other information provided for by the international treaty of the Republic of Kazakhstan, which is also effective for the foreign state in the territory of which the wanted person is located (The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 231-V ZRK, 2014).

Among the significant and positive novelties of the new Criminal Procedure Code of the Republic of Kazakhstan, the following are worth mentioning. Article 7 of the Criminal Procedure Code of the Republic of Kazakhstan of 2014 clarifies the concept of extradition arrest, according to which it is an interim measure to enforce a decision of the competent authority of a foreign state on the detention of a person, applicable by the court with respect to the person wanted for the purpose of extradition to a foreign state. In this regard, Articles 588-589 of new Criminal Procedure Code of the Republic of Kazakhstan distinguish between the temporary detention of a person in custody and the extradition arrest. Proceeding from the formulation of Art. 534 of the expired Criminal Procedure Code of 1997, it can be assumed (The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan of December 13, 1997 No. 206, 1997) that earlier the extradition arrest meant both detention and detention for extradition. Article 592 of the new Criminal Procedure Code of the Republic of Kazakhstan of 2014 establishes the procedure for appealing against the decision to extradite a person,

according to which the decision of the Prosecutor General or his deputy to extradite a person may be appealed by the person against whom this decision was made, or his defender to the Supreme Court of the Republic of Kazakhstan within ten days from the date of receipt of a copy of the resolution. Article 531-1 of the old Criminal Procedure Code of the Republic of Kazakhstan of 1997 allowed appealing against the decision on extradition of a person in the district and equivalent court in the place of location of the person within ten days from the date of receipt of the notification.

According to A. Grigoriev, the Senior Prosecutor of the Department of International Cooperation of the General Prosecutor's Office of the Republic of Kazakhstan, the delineation of the temporary detention of the person in custody and the extradition arrest enable law enforcement agencies to conduct a full-fledged check on the detainee before the application of extradition arrest. The temporary detention of a person in custody for up to 40 days makes it possible to study the identity of the detainee more qualitatively, including on the possible existence of the circumstances preventing the extradition, to establish reliably the citizenship, as well as the availability of the refugee status or the status of a person seeking for asylum, to compare the norms of the criminal and criminal procedure legislation of the requested and requesting parties. The possibility of appealing against the decision of the General Prosecutor's Office on the extradition of a person to a foreign country directly to the Supreme Court of the Republic of Kazakhstan will significantly reduce the time of detention of the extradited person in custody in the territory of Kazakhstan. Taking into account that the decision of the Supreme Court of the Republic of Kazakhstan on the recognition of the decision to extradite a person as unlawful or unjustified and its cancellation comes into force from the moment of its announcement; this innovation as a whole will help to reduce the procedural deadlines and to improve the quality of judicial control in the field under consideration (Kazakhstan is Preparing an Extradition Treaty with 14 Countries: Interview with Andrei Grigoriev, Senior Prosecutor of the Department of International Cooperation of the General Prosecutor's Office of the Republic of Kazakhstan, 2015).

Within the framework of the international cooperation in the field of criminal justice, the Office of the Attorney General of the Republic of Kazakhstan as an authorized state body is actively working on the preparation and signing of bilateral treaties on legal assistance in criminal cases and extradition of perpetrators for criminal prosecution or enforcement of the sentence. At present, the Republic of Kazakhstan has concluded the following bilateral international treaties in the field of criminal justice:

1. The Treaty between the Republic of Kazakhstan and the People's Republic of China on Legal Assistance in Civil and Criminal Cases, signed in Beijing on January 14, 1993.

2. The Treaty between the Republic of Kazakhstan and Mongolia on the Extradition of the Perpetrators for Criminal Prosecution or to Enforce a Sentence, signed in Ulaanbaator on October 22, 1993.
3. The Treaty between the Republic of Kazakhstan and Mongolia on Mutual Legal Assistance in Civil and Criminal Cases, signed in Ulaanbaator on October 22, 1993.
4. The Treaty between the Republic of Kazakhstan and the Republic of Lithuania on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, signed in Vilnius on August 9, 1994, and the Protocol to the Treaty between the Republic of Kazakhstan and the Republic of Lithuania on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, signed in Almaty on March 7, 1997.
5. The Treaty between the Republic of Kazakhstan and the Republic of Turkey on Legal Assistance in Criminal Cases and Extradition of Perpetrators, concluded in Almaty on August 15, 1995.
6. The Treaty between the Republic of Kazakhstan and the People's Republic of China on Extradition, signed in Almaty on July 5, 1996.
7. The Treaty between the Republic of Kazakhstan and Georgia on Mutual Legal Assistance in Civil and Criminal Cases, signed in Tbilisi on September 17, 1996, and the Protocol to this Treaty, signed in Astana on March 31, 2005.
8. The Treaty between the Republic of Kazakhstan and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminal Cases, signed in Pyongyang, on April 7, 1997.
9. The Treaty between the Republic of Kazakhstan and the Kyrgyz Republic on the Extradition of the Perpetrators and the Criminal Prosecution of April 8, 1997, concluded in Almaty on April 8, 1997.
10. The Treaty between the Republic of Kazakhstan and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, signed in Almaty on June 2, 1997.
11. The Treaty between the Republic of Kazakhstan and the Republic of Korea on Extradition of November 13, 2003, signed in Seoul.
12. The Treaty between the Republic of Kazakhstan and the Republic of India on Extradition No. 730 of January 22, 2009, committed in the city of New Delhi on January 24, 2009 (to date it has not been ratified).
13. The Treaty between the Republic of Kazakhstan and the United Arab Emirates on the Extradition of Criminals, committed in Abu Dhabi on March 16, 2009.

14. The Treaty between the Republic of Kazakhstan and the People's Republic of China on the Transfer of the Convicted Persons, committed in Beijing on February 22, 2011.
15. The Treaty between the Republic of Kazakhstan and the Islamic Republic of Iran on Extradition, committed in Tehran on April 29, 2012.
16. The Treaty between the Republic of Kazakhstan and the Kingdom of Spain on Extradition, committed in Madrid on November 21, 2012.
17. The Treaty between the Republic of Kazakhstan and the Italian Republic on Transfer of the Convicted Persons, committed in Astana on November 8, 2013.
18. The Treaty between the Republic of Kazakhstan and Hungary on Mutual Legal Assistance in Criminal Cases, committed in Astana on April 1, 2015.
19. The Treaty between the Republic of Kazakhstan and Hungary on Extradition, committed in Budapest on June 3, 2014.
20. The Treaty between the Republic of Kazakhstan and the Republic of Bulgaria on the Extradition of Persons, committed in Sofia on November 14, 2014.
21. The Decree of the President of the Republic of Kazakhstan of December 4, 2014 No. 969 "On the Signing of the Treaty between the Republic of Kazakhstan and Mongolia on the Transfer of Convicted Persons" (not ratified, effective from the date of signature).
22. The Treaty between the Republic of Kazakhstan and the Italian Republic on the Extradition of Persons, committed in Astana on January 22, 2015.
23. The Treaty between the Republic of Kazakhstan and the Italian Republic on Mutual Legal Assistance in Criminal Matters, committed in Astana on January 22, 2015.
24. The Treaty between the Republic of Kazakhstan and the United States of America on Mutual Legal Assistance in Criminal Cases, signed in Washington on February 20, 2015.
25. The Treaty between the Republic of Kazakhstan and the Principality of Monaco on Mutual Legal Assistance in Criminal Cases, committed in Monte Carlo on March 5, 2015.

Following the results of last year's visit of the President of the Republic of Kazakhstan N. Nazarbayev to Saudi Arabia, more than 10 treaties have been signed, including two treaties between the Republic of Kazakhstan and the Kingdom of Saudi Arabia on the transfer of convicted persons and the treaty between the Republic of Kazakhstan and the Kingdom of Saudi Arabia on the extradition of persons. It should be noted that the Republic of Kazakhstan is the first country of

the Commonwealth of Independent States to sign such treaties in the framework of international cooperation in the field of criminal justice. The result of bilateral treaties was the satisfaction by the Kingdom of Saudi Arabia in December of the last year of the request of the Republic of Kazakhstan to extradite a citizen of Kazakhstan, accused of committing embezzlement on a particularly large scale.

CONCLUSION

In conclusion, the authors would like to focus on the following points. The extradition of the persons on the basis of bilateral international treaties or conventions concluded between the member countries, and in cases of their absence, on the basis of the principle of “reciprocity”, effective in the international law and widely applied in practice, or on the basis of the legislative acts of the member state or at the discretion of the state, evidences the belonging of the institution of extradition to the branch of the international law. Turning to the content of the international treaties concluded by the Republic of Kazakhstan and the norms of the national legislation regulating the procedure and conditions for extradition, it can be concluded that the Kazakhstan legislator implies under extradition both extradition and transfer of a perpetrator to a foreign state at its request.

In order to ensure the principle of the inevitability of criminal responsibility and punishment, it is necessary to improve the system of national legislation of the Republic of Kazakhstan, which regulates only the field of legal relations related to the extradition of persons who have committed a crime or the extradition of the criminals. For these purposes, it is necessary to use the uniform terminology in the specified fields of legal relations in the norms of substantive and procedure law of the Republic of Kazakhstan. Also in the current criminal legislation of the Republic of Kazakhstan, it is necessary to introduce a definition of the term “extradition”, taking into account the proposals on the adoption of a special law on extradition, which were repeatedly expressed in the theory of law.

In order to develop and strengthen international cooperation of the Republic of Kazakhstan in criminal cases, it is required to continue the active work in the field of extradition of perpetrators by concluding the bilateral international treaties and joining the multilateral conventions. In this part, it is necessary to strengthen the role of the prosecution authorities and to expand their competence in the field of international cooperation in criminal proceedings.

References

- Galenskaya, L.N. (1972). *Mezhdunarodnaya borba s prestupnostyu* [International Fight against Crime]. Moscow: Mezhdunar. Otnosheniya, pp. 122.
- Kazakhstan gotovit dogovora ob ekstraditsii s 14 stranami: Intervyu s Andreem Grigorevym, starshim prokurorom Upravleniya Departamenta mezhdunarodnogo sotrudnichestva Generalnoi prokuratury Respubliki Kazakhstan* [Kazakhstan is Preparing an Extradition

Treaty with 14 Countries: Interview with Andrei Grigoriev, Senior Prosecutor of the Department of International Cooperation of the General Prosecutor's Office of the Republic of Kazakhstan]. (2015, July 13). Retrieved April 6, 2017, from <http://www.bestnews.kz/index.php/bn-novosti/item/1682-kazakhstan-gotovit-dogovora-ob-ekstraditsii-s-14-stranami.html>

Konstitutsiya Respubliki Kazakhstan (s izm. i dop., vnesennymi Zakonami RK ot 07.10.98 g. No. 284-I; ot 21.05.07 g. No. 254-III; ot 02.02.11 g. No. 403-IV) [The Constitution of the Republic of Kazakhstan (with amendments and additions introduced by the Laws of the Republic of Kazakhstan as of October 7, 1998 No. 284-I, No. 254-III of May 21, 2007, No. 403-IV of February 2, 2011)]. (1995). Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/K950001000_

Konstitutsiya Rossiiskoi Federatsii (s uchedom popravok, vnesennykh Zakonami Rossiiskoi Federatsii o popravkakh k Konstitutsii Rossiiskoi Federatsii ot 30.12.2008 No. 6-FKZ, ot 30.12.2008 No. 7-FKZ, ot 05.02.2014 No. 2-FKZ, ot 21.07.2014 No. 11-FKZ) [The Constitution of the Russian Federation (taking into account the amendments introduced by the Laws of the Russian Federation on Amendments to the Constitution of the Russian Federation No. 6-FKZ of December 30, 2008, No. 7-FKZ of December 30, 2008, No. 2-FKZ of February 5, 2014, No. 11-FKZ of July 21, 2014)]. (1993). Retrieved April 6, 2017, from http://www.consultant.ru/document/cons_doc_LAW_28399/.

O bezhentsakh: Zakon Respubliki Kazakhstan ot 4 dekabrya 2009 goda No. 216-IV ["On Refugees": The Law of the Republic of Kazakhstan No. 216-IV]. (2009, December 4). Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/Z090000216_

"O Kontseptsii pravovoi politiki Respubliki Kazakhstan": Ukaz Prezidenta Respubliki Kazakhstan ot 20 sentyabrya 2002 goda No. 949 ["On the Concept of the Legal Policy of the Republic of Kazakhstan": Decree of the President of the Republic of Kazakhstan No. 949]. (2002, September 20). Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/U020000949_.

"O patifikatsii Konventsii o pravovoi pomoshchi i pravovykh otnosheniyakh po grazhdanskim, semeinym i ugolovnym delam": Postanovlenie Verkhovnogo Soveta Respubliki Kazakhstan ot 31 marta 1993 goda ["On the Ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases": Resolution of the Supreme Council of the Republic of Kazakhstan]. (1993, March 31). Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/B930005100_.

"O ratifikatsii Konventsii o pravovoi pomoshchi i pravovykh otnosheniyakh po grazhdanskim, semeinym i ugolovnym delam": Zakon Respubliki Kazakhstan ot 10 marta 2004 goda No. 531 ["On the Ratification of the Convention on legal Assistance and Legal Relations in Civil, Family and Criminal Cases": Law of the Republic of Kazakhstan No. 531]. (2004, March 10). Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/Z040000531_

"Ob utverzhenii Instruksii ob organizatsii prokurorskogo nadzora za primeneniem zakonov pri osushchestvlenii mezhdunarodnogo pravovogo sotrudnichestva": Prikaz Generalnogo prokurora Respubliki Kazakhstan ot 30 dekabrya 2014 goda No. 166 ["On Approval of the Instruction on the Organization of the Prosecutor's Supervision over the Application of Laws in the Implementation of the International Legal Cooperation": The Order of the Prosecutor General of the Republic of Kazakhstan No. 166]. (2014, December 30). Retrieved April 6, 2017, from <http://prokuror.gov.kz/rus/dokumenty/prikazy-generalnogo-prokurora/instrukciya-ob-organizacii-prokurorskogo-nadzor>.

- “O vvedenii v Respublike Kazakhstan moratoriya na smertnyu kazn”*: Ukaz Prezidenta Respubliki Kazakhstan ot 17 dekabrya 2003 goda No. 1251 [“On the Introduction of the Moratorium on the Death Penalty in the Republic of Kazakhstan”]: The Decree of the President of the Republic of Kazakhstan No. 1251]. 2003, December 17. Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/U030001251_
- Ugolovnyi kodeks Respubliki Kazakhstan: Kodeks Respubliki Kazakhstan ot 3 iyulya 2014 goda No. 226-V ZRK* [The Criminal Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 226-V ZRK]. (2014, July 3). Retrieved April 6, 2017, from <http://adilet.zan.kz/rus/docs/K1400000226>.
- Ugolovno-protsessualnyi kodeks Respubliki Kazakhstan: Kodeks Respubliki Kazakhstan ot 4 iyulya 2014 goda No. 231-V ZRK* [The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan No. 231-V ZRK]. (2014, July 4). Retrieved April 6, 2017, from <http://adilet.zan.kz/rus/docs/K1400000231>.
- Ugolovno-protsessualnyi kodeks Respubliki Kazakhstan: Kodeks Respubliki Kazakhstan ot 13 dekabrya 1997 goda No. 206* [The Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan of December 13, 1997 No. 206]. (1997, December 13). (Repealed by the Code of the Republic of Kazakhstan of July 4, 2014 No. 231). Retrieved April 6, 2017, from http://adilet.zan.kz/rus/docs/Z970000206_.

