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INTERNATIONALISATION OF THE CRIMINAL PROCEDURE WITHIN EXTRADITION: CASE BELARUS

The subject of the article is the extradition as an element of the international legal paradigm of the modern criminal procedure. In this context, the goal of this research is to identify the fundamental human rights affected by the criminal proceedings within the extradition procedure based on cases related to the Republic of Belarus as well as legal provisions of this state. In this regard, the article explores the concept of the international legal paradigm of the modern criminal procedure. The author analyses the principles, the implementation of which is required to ensure human rights in the framework of the Belarusian criminal procedure in the course of extradition. The article reveals certain fundamental human rights that are affected during the extradition procedure: the personal inviolability, the right to defence and ne bis in idem.

Key words: internationalisation of criminal procedural law; international legal paradigm; extradition; international legal assistance in criminal matters

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1. Introduction

The development of technologies, economic integration, cultural ties lead to an increase in mobility, both of the people themselves and of the activities they carry out, and that leads to the eventual involvement of persons in criminal procedural relations outside the state of their citizenship. The positive fruits of globalisation are used not only by the law-abiding part of a society, but also by individuals and organisations with socially dangerous goals. However, even when criminal proceedings go beyond the national state, the human rights enshrined in international instruments must be respected.

In this paper, we look in general at the penetration of international law into modern criminal procedure (2) and reveal the principles that have been developed in the provision of international legal assistance in criminal cases, note their connection with human rights (3): the principles of personal inviolability (3.1), the right to defence (3.2) and *ne bis in idem* (3.3) during an extradition, bringing us to certain conclusions (4).

2. International legal paradigm of contemporary criminal procedure

The legal systems of modern states are experiencing the penetration of principles, standards, norms from the outside. These can be contributions from international (including regional) law, which is being developed by many states, or supranational law (in a narrow sense), created within the framework of integration. The corresponding processes are of the nature of *globalisation* (the spread of some common patterns of development to other states and peoples (Чиркин, 2017: 132)) or *integration* (an objective and, to a certain extent, a spontaneous process of unification of states and peoples due to the expansion of international relations and the internationalisation of public life (Кашкин, 2017: 30)).

The process of mutual influence of legal systems within the framework of cultural dialogue is sometimes called the internationalisation of law (Стойко, 2006: 230). The internationalisation of criminal procedural law with the growth of the transboundary value of criminal procedural activity requires deepening comparative knowledge of the criminal procedure. In the same context, Alexander Trefilov uses the term internationalisation of the criminal procedure (Трефилов, 2014: 3). These tendencies are typical for the legal systems of many states. In the field of criminal justice, such penetration affects the most tangible

foundations of the state sovereignty: the state, in whose jurisdiction, under whose authority a person is, has the right to decide how to restrict or punish him or her. And this “pressure” from the outside is often opposed. It is enough to remind the decision of the German Constitutional Court *Solange I*. Or more recent: the norm set forth in par. b) of part 5.1 of Art. 125 of the Constitution of the Russian Federation (as revised in 2020): the Constitutional Court of the Russian Federation may decide on the possibility of executing a decision of a foreign or international court... which imposes obligations on the Russian Federation in the event if this decision is contrary to the principles of public law of this state.

The chronology of changes in approaches to international legal norms in criminal proceedings can be traced in various editions of the Commentary to the German Code of Criminal Procedure. Initially (in the 1970s) German scientists with reference only to the ECHR pointed out that the peculiarity of the latest improvement of legislation is the appearance, along with the usual federal laws regulating the criminal procedure, provisions of interstate law, which in a generalised form define individual principles (Löwe et. al, 1976: 6). In the next edition, the International Covenant on Civil and Political Rights, the European conventions on extradition and on mutual legal assistance, the Vienna Convention on Diplomatic Relations are also named as sources of criminal procedural law (Rieß et. al, 1988: 4). In 1999, the commentary already contains the term “internationalisation of the criminal procedure”, which, according to the author, appears in the regulation of issues significant for the criminal proceedings (for example, extraterritoriality) by international law, as well as in the establishment of minimum standards in this area (Rieß et. al, 1999: 23–24). And in the latest edition one can read about “the penetration of criminal procedural law with international and European influence” (Becker et. al, 2016: 7).

It is impossible not to notice the active penetration of international legal regulations through criminal procedural law into the activity on initiating, investigating, considering and resolving criminal cases. The need to take into account international legal provisions by a law enforcement officer is also noted by German specialists, speaking about the internationalisation of criminal procedural law (Rieß et. al, 1999: 23, 27). As a result of the internationalisation, an international legal paradigm of modern criminal procedure has developed, that is, a paradigm based on the norms of international law. In our opinion, the international legal paradigm implies a system of ideas of the legislator, enforcer and society about law and activities based on it, as well as the corresponding values in the context of generally recognised principles and norms of international law.

In the light of the content of the provisions of Art. 8 of the Constitution of the Republic of Belarus[1], the agencies conducting the criminal procedure are obliged in their activities to take into account the priority of the generally recognised principles of international law. Accordingly, we can talk about the fact that these principles penetrate into the modern criminal procedure of Belarus, although some authors indicate that these principles should be normatively enshrined in international law (Сільчанка, 2012: 22). But if criminal procedural norms are constructed in the context of international legal norms and generally recognised principles of international acts, then the very activity of the agencies conducting the criminal procedure is subordinate to the international legal paradigm.

As Immanuel Kant pointed out, the political idea of state law implies that it should be “considered in relation to an international law that is universal and has power”. However, at that time he believed that “experience tells us ‘Don’t waste time hoping for that to happen’” (Kant). The international legal paradigm of criminal procedure leads to the need to constantly correlate the norms of national criminal procedural law with indefinite international standards that are not clearly enshrined in any one international legal act, which allows each researcher to refer to different formula. The norms of national criminal procedural law are analysed through the prism of the norms of international law (not always valid for the Republic of Belarus) not only by scientists, but also by the judges of the Belarusian Constitutional Court.

Under the influence of the emerging paradigm, the science of criminal procedure has to be rebuilt as well. And in this case, it will be required to expand and transcend the main topics it studies. As Maximo Langer points out, in the comparative legal aspect of the criminal procedure, one should take into account the achievements of science in the study of issues of globalisation of law, international relations and postcolonial research (Langer, 2014: 727). However, the change of paradigm at the legislative level, in the science of criminal procedure, is largely ahead of law enforcement. This is due to the need to change the mentality of enforcers.

Some authors highlight, first of all, the *international Human Rights paradigm* of the modern criminal procedure (Bassiouni, 2015: 67; Dearing, 2017: xi). In this case, it is meant that criminal justice should protect not only and not so much public interests as individual human rights enshrined in international legal acts. As Albin Dearing points out, criminal justice is in a state of transformation, moving towards the paradigm of human dignity in the context of the emerging

1 “The Republic of Belarus shall recognise the supremacy of the generally recognised principles of international law and shall ensure the compliance of legislation therewith”.

global humanistic society. And then he continues: “we are not talking about international law, not about legal relations developing between peoples, but about the universal rights of individuals to effective protection from impunity, the rights guaranteed by the world community of people and applied in practice by state institutions” (Dearing, 2017: 298). However, in our opinion, we cannot be limited only to a separate, albeit very important, element of international legal penetration into the criminal procedure. The immersion of the institute of international legal assistance in criminal matters from the international level to the level of national regulation is another important point in the transformation of the paradigm of the criminal procedure. But this institute is primarily aimed not at ensuring human rights, but at a joint fight against criminal acts based on the confidence of states. Although trust in a foreign criminal procedure also largely depends on the observance of generally recognised principles of international law, including those related to ensuring human rights.

3. Principles for the provision of international legal assistance in criminal matters

International legal standards predetermine common principles of international legal assistance in criminal matters. The latter are inherent for all types of such an assistance. Based on the essence of the activity under research, and also, taking into account the opinion prevailing in the doctrine (Волженкина, 2001: 69–72; Глумин, 2005: 23), the principles of international legal assistance in criminal matters can be roughly divided into three groups: *universal principles of international law* (the principle of sovereign equality of states, the principle of reciprocity, humanism, respect and observance of human rights and freedoms (Ursu, 2022: 134), the fulfilment in good faith of the obligations assumed by a state, protection of the rights of citizens abroad, the principle of interstate cooperation, non-interference in internal affairs, etc.), *general principles of national criminal law and procedure* (legality, ensuring the inevitability of responsibility for a committed illegal act, ensuring the suspect, accused and the convicted person of the right to qualified legal assistance, the administration of justice on the basis of adversariality and equality of parties, stimulation of law-abiding behaviour of citizens, etc.), *special principles* (counteraction only to common crimes, dual criminality, the principle of specialty). First of all, it is necessary to dwell on the principles directly related to a human.

Humanism implies the recognition of the value of a person as an individual, the recognition of his right to free development and the manifestation of his

abilities. In the course of providing international legal assistance in criminal matters, attention is needed to each person (a participant in a criminal procedure or a person involved in the process of providing such an assistance), respect and a good attitude towards a human being. At the core, this principle extends from national and international criminal law. International acts based on the principle of humanism and other generally recognised principles instruct the political elite to ensure and protect human rights and freedoms (Титова, 2017: 90).

The *principle of respect and observance of human rights and freedoms* implies the obligation of the state to respect and observe human rights and freedoms, as well as to promote their universal respect and observance, i.e. to act in the spirit of the Universal Declaration of Human Rights. First of all, in the sphere of criminal procedural legal relations, it is necessary to strictly observe the right of every person to personal inviolability. That is why a person can be wanted for detention in another state for the purpose of extradition only on the basis of the relevant act of the competent authority of the requesting state.

States commit themselves to respecting historically achieved human rights standards and strive to ensure that officials of agencies conducting criminal proceedings do not violate human rights and freedoms during their activities. On the other hand, the principle of respect and observance of human rights and freedoms is implemented by ensuring the extradition of persons accused of committing acts recognised as crimes in accordance with international conventions and violating fundamental human rights and freedoms.

It should be also understood that the special principles applied within the provision of international legal assistance do not turn into procedural rights of an accused. As noted by the Federal Supreme Court of the Federal Republic of Germany, “the principle of specialty serves only to protect the rights of the requested state for extradition, ... but not to protect the extradited person, which cannot receive any rights from it” (Esser, 1993: 135). At the same time, judicial practice shows that fundamental human rights (personal inviolability, the right to defence, *ne bis in idem*) may be violated during extradition. And the requested person should be able to protect such rights.

3.1. Personal inviolability

The content of the general (constitutional) principle of the criminal procedure, the inviolability of the person, is based on the norm of Art. 25 of the Belarusian Constitution. Within the framework of a social contract, the state guarantees and ensures the freedom and inviolability of the person. In this case, the grounds

of restriction and deprivation of personal freedom, as well as the corresponding procedure, can be provided exclusively in the law. Taking into account the constitutional norm, the provisions of the Belarusian Code of Criminal Procedure (hereafter referred as CCP) on the principle of personal inviolability (Art. 11), on the detention (Chapter 12), the application of a pre-trial restriction in the form of arrest (Art. 116-119, 126, 127), as well as on appeal the application of these measures of criminal procedural coercion (Art. 143-146) have been designed. These provisions are extended to cases of imprisonment of a person subject to extradition.

The procedure for the application of arrest has not undergone significant changes with the adoption of the new (post-Soviet) CCP. As before, in the Soviet period, in order to apply this pre-trial restriction, the person conducting the inquiry and the investigator need to authorise the decision by the prosecutor. The prosecutor and the court can make the respective decision independently.

In urgent cases, when a foreign state authority needs to detain and take into custody a person who will subsequently be requested for extradition, before sending a request for extradition, a special request is sent to the Republic of Belarus to apply a pre-trial restriction to the person with the aim of his (her) extradition. The request must be accompanied by the legal basis for the detention (arrest) of the person in a foreign state (certified copies of the relevant documents). In addition, a foreign state authority must submit a written undertaking on the subsequent submission of a request for the extradition of this person. In the framework of the international search for persons, as a request for the application of a pre-trial restriction to a person prior to the request for extradition, an Interpol (International Criminal Police Organisation) notice “Wanted International Criminal (Arrest with the Purpose of Extradition)” may be applied. This practice can cause problems with the protection of the rights of affected persons (Самарин, 2020: 19).

Detention and pre-trial restriction of a person prior to the receipt of a request for his extradition is possible in exceptional cases and cannot be the norm. Such exceptional cases aren’t named in CCP, but, to our mind, they should include: the existence of grounds to believe that the person will leave the territory of the Republic of Belarus, or the existence of grounds to believe that the person will continue criminal activity, or the continuation of the crime, etc.

Thus, the detention can be applied within extradition procedure in Belarus to a person:

- in respect of which a decision has been made to execute the request of a foreign state authority to apply a pre-trial restriction with the aim of extradition;
- in respect of which a resolution was issued on the execution of the request of a foreign state authority to extradite him (her) for criminal prosecution and (or) serving a sentence;

- in connection with being on the international wanted list for the purpose of extradition.

The maximum period of detention on these grounds corresponds to the period specified in Art. 108 (3) of the CCP and is 72 hours from the moment of actual detention. Upon the expiration of this period, the detained person is either released, or a pre-trial restriction should be applied to him (her).

Until the extradition is granted or refused, a pre-trial restriction may be applied to the requested person in the form of arrest or house arrest. Prior to the issuance of an order on the application of a pre-trial restriction to a person who is on the international wanted list with the aim of extradition, the prosecutor or his deputy are obliged in each case to take explanations from the person regarding the fact that he was put on the international wanted list. These explanations may contain an indication of the existence of grounds for refusing to execute the subsequent request of a foreign state authority for the extradition of the person. There is no such obligation in the CCP in relation to a person subject to arrest on the basis of a decision to execute a request from a foreign state authority. This provision does not fully comply with the principles of procedural economy and equality of persons before the law.

The prosecutor or his deputy, who issued the relevant decision, must notify relatives of the person, if they live on the territory of the Republic of Belarus, within 24 hours after the application of a pre-trial restriction to a person in accordance with Art. 512 of the CCP. In our opinion, this Article unreasonably narrowed the right of an arrested person to notify family members or close relatives about the place of detention.

Based on the provisions of Art. 60 of the Constitution of the Republic of Belarus (“*everyone is guaranteed the protection of his rights and freedoms by a competent, independent and impartial court...*”), we believe that the most correct thing is to arrest a person with the aim of subsequent extradition only on the basis of a court decision. The authorisation of an arrest by an independent court is recognised as the most correct and effective in the literature (Данилевич, Петрова, 2008; Василевич, 2021: 15–17) as well as by the Constitutional Court of the Republic of Belarus in decision No. R-423/2009 dated 28.12.2009. At the end of 2020, a draft law was prepared, which was supposed to introduce a judicial procedure for authorising an arrest in Belarus. The draftspersons proposed to implement the possibility of applying an arrest on the basis of a court order, adopted at the request of an agency of inquiry, a person conducting the inquiry, an investigator or a prosecutor. The draft is still under discussion.

We should understand that a prosecutor often makes his (her) decision *in absentia*, not only without questioning the person, but also without familiarising

himself (herself) with the case, therefore, the prosecutor cannot always assess the person's danger to society and is formally guided only by the norms of the CCP.

Thus, on the territory of Belarus, a citizen of Russia S., who was on the interstate wanted list by order of the Krasnosulinsk court, for committing theft, was detained and taken into custody. Subsequently, the Russian side reported that the request for S.'s extradition would not be sent, since the criminal case against her was terminated due to the change in the situation.

In 2005, a citizen of Armenia M. was detained and taken into custody on the territory of Belarus, but the Prosecutor's Office of Armenia reported that the criminal case against him "is subject to termination upon expiration of the statute of limitations"[2].

These persons were unjustifiably deprived of their liberty and did not have the opportunity to exercise their right to defence. In order not to create the preconditions for making a decision, based on "corporate" interest, changes should be made in the procedure for applying the pre-trial restrictions as part of the extradition procedure. Even Ivan Fojnickij, our fellow countryman and a leading theorist of criminal law in the late Russian Empire, pointed out that the detainees, "caught by criminal prosecution, often fall into such a depressed state of mind or so lose their composure and worry that they cannot give themselves a proper account" for the meaning the circumstances of the case (Фойницкий, 1996: 61). The detainee must be provided with conditions for the exercise of the right to defence.

3.2. Right to defence

The most important human right of a person subject to extradition is the right to defence. A number of provisions of Art. 507 of the CCP serve as a guarantee of the exercise of this right by a person detained or to whom an arrest, a house arrest has been applied within the extradition procedure:

- to know about the circumstances that served as the basis for his (her) detention or the application of pre-trial restrictions;
- to receive a written notification of his (her) rights;
- to express his opinion and give explanations;
- to have one or several defence lawyer(s), etc.

For the first time at the legislative level in Belarus, this person is given the opportunity to express his opinion and give explanations. This right can be exercised when taking explanations by the prosecutor, as well as in court. The subject

2 Archive of the General Prosecutor's Office of the Republic of Belarus [2002] Case Nr. 25/21-2002; [2005] Case Nr. 25/236-2005.

of the person's explanations is not a charge brought against him (her) in a foreign state, but the observance by a foreign state authority of the conditions for extradition of the person and the existence of grounds for refusing to execute such a request. It is also important to obtain legal advice from a lawyer at the expense of the local budget from the moment of detention or the application of an arrest (but not house arrest). Such a lawyer may subsequently be chosen as a defence lawyer of the person. In addition, despite the absence in the list of the right to participate in the consideration by the court of complaints against a decision to extradite the person to a foreign state, such a person should have this right, based on the provisions of Art. 516 (1) of the CCP (but only if the person himself (herself) has filed a complaint).

The person can implement his (her) rights specified in Art. 507 of the CCP in person or through one or more defence lawyers. Although a number of rights can be exercised only by the person personally (clauses 1, 3, 6, 10 of Art. 507 (1) and clause 2 of Art. 507 (2) of the CCP). With the introduction to the CCP of the Section XV with provision on international legal assistance the legislator expanded the functions of the defence lawyer. Now the defence lawyer carries out procedural activities in order to ensure the rights and interests of a person within the extradition procedure (clause 9 of Art. 6 of the CCP). At the same time, the legislator has expanded the criminal procedural function of defence by introducing a foreign element into the criminal procedure of the Republic of Belarus, which is not entirely correct. Despite the name "defence lawyer", this person does not oppose the prosecution, since the agencies of the Republic of Belarus conducting the criminal proceedings are not entitled to resolve the issues of the extradited person's accusation on the merits. The task of such a lawyer is to monitor compliance with the legislation of the Republic of Belarus and international treaties of the Republic of Belarus within the extradition procedure, the observance of the rights (including procedural) of persons.

When determining the scope of persons admitted as defence lawyers of persons subject to extradition, the legislator is guided by the general provisions of the criminal procedure of the Republic of Belarus (Art. 44 (2) of the CCP), which proceed from the fact that only professional lawyers – Belarusian advocates can defend in criminal proceedings. Considering that the CCP has equalised the rights of the parties, all conditions must be created to establish a trusting relationship between the client and the defender, including by allowing the involvement of a subject close to the client of the cultural and linguistic space for consulting on legal issues.

In order to exercise his (her) functions to protect the rights and interests of the persons within extradition procedure the defence lawyer is endowed with a

number of rights. Such a lawyer independently exercises his (her) rights, but he (she) chooses the means and methods of defence, often taking into account the will of the client. If we compare the rights of the defence lawyer and the mentioned represented persons, then we can come to the conclusion that they are derived from the rights of the latter. However, unlike the client, the defence lawyer has the right, regardless of the judge's discretion, to participate in the consideration by the court of complaints about the decision to extradite the person to a foreign state, as well as to demand that the records of the circumstances be entered into the minutes of the court session, which, in his (her) opinion, should be noted.

3.3 Ne bis in idem

The principle *ne bis in idem* is known to the national criminal procedure, but the CCP extends it, first of all, to domestic court decisions and similar decisions (par. 8, 9 of Art. 29 (1) of the CCP). It implies a ban on the implementation of criminal prosecution and the issuance of a sentence in relation to an act that has already been the subject of an effective sentence (a court ruling (resolution) to terminate criminal proceedings, a decision of an inquiry agency, investigator, prosecutor to terminate criminal proceedings or on refusal to initiate a criminal case). The meaning of this principle is not just to prevent repeated punishment for the same unlawful act, but also to put a barrier to repeated criminal proceedings (for example, in the case of an acquittal).

As a general rule, *ne bis in idem* has no international effect and the existence of a sentence for the same act in a foreign state does not interfere with criminal proceedings in Belarus. Exceptions may be provided for in international treaties. So, on the basis of Art. 7 (1) of the Treaty on the Specifics of Criminal and Administrative Liability for Violations of the Customs Legislation of the Customs Union and the Member States of the Customs Union, 2010, the principle is valid on the territory of the Eurasian Economic Union in relation to violations of the customs legislation of the Customs Union and the legislation of the Member States, control over compliance with which is entrusted to the customs authorities, for the commission of which criminal liability is provided. In addition, court decisions of foreign states in criminal cases may have prejudicial significance on the territory of Belarus (Art. 8 of the Criminal Code of the Republic of Belarus).

However, the rules on international legal assistance also contain restrictions based on the *ne bis in idem* principle. There is no general prohibition applicable to all types of assistance. But the existence in the Republic of Belarus of an un-

lifted decision on the refusal to initiate a criminal case or on the termination of criminal prosecution, proceedings in a criminal case, or a sentence or decision (ruling) of the court of the Republic of Belarus on the termination of criminal proceedings for the same act is an obstacle to providing assistance in the form of extradition of a person to a foreign state as well as transit of an extradited person (clauses 3, 8, 9 of Art. 484 (1), Art. 486, Art. 489 of the CCP). This is an imperative ground for refusal to execute the corresponding request of a foreign state authority.

The application of this principle can be seen in practice. Thus, the Deputy Prosecutor General of the Republic of Belarus by his decision dated November 20, 2014 satisfied the request of the General Prosecutor's Office of the Russian Federation to extradite a citizen of Ukraine S. for the execution of the judgment of the City Court of the Russian Federation dated March 17, 2008. S. claimed in the complaint that there are no legal grounds for his extradition to the Russian Federation. Among other things, for the acts committed in the Russian Federation, he was already convicted on the territory of Ukraine, served his sentence, and arrived in the Republic of Belarus with his family for permanent residence. Having considered the complaint, having examined the submitted materials, the judge of the Supreme Court of the Republic of Belarus found that S.'s complaint was not subject to satisfaction. The regional court correctly found S.'s arguments about his conviction in 2007 on the territory of Ukraine for a crime committed in the Russian Federation and serving the sentence imposed as unreasonable, since they are refuted by the materials presented, the reliability of which is beyond doubt. According to the materials, the criminal case against S. was pending at the City Court of the Russian Federation. In this case, S. was not prosecuted on the territory of a foreign state[3].

If we analyse the text of national legal provisions on inclusion of time spent according to the sentence imposed by the judgment of a foreign court, we can see that recognition is possible only in relation to the already served sentence. In our opinion, it is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension, which can be seen in individual international treaties aimed at combating certain types of crimes. As a basis, we can take the requirements developed by the Court of Justice of the European Union in its decisions:

– the "same person" requirement – it concerns the same defendant (case 467/04);

3 Постановление Верховного Суда Республики Беларусь [06.01.2015] КонсультантПлюс. Беларусь.

– the “*bis*” requirement – it concerns a final decision; can be also accepted an out-of-court settlement with the public prosecutor (joined cases C-187/01 and C-385/01), a court acquittal based on lack of evidence (case C-150/05), etc.;
– the “*idem*” requirement – it concerns the same acts: the identity of the material acts in the sense of “a set of concrete circumstances which are inextricably linked together in time, in space and by their subject-matter” (case C-436/04);
– the “enforcement” requirement – the penalty has been imposed, it has been enforced, it is in the process of being enforced or can no longer be enforced;
– the “criminal nature” requirement – the thin line existing between (punitive) administrative sanctions and criminal sanctions[4].

4. Conclusions

The international legal paradigm implies a system of ideas of the legislator, enforcer and society about law and activities based on it, as well as the corresponding values in the context of generally recognised principles and norms of international law. By now, we can talk about the existence of an international legal paradigm of the criminal procedure. This paradigm includes the influence of international human rights law. Penetration of international legal regulations into national criminal procedural legislation is caused by the need to bring the relevant rules to the attention of the law enforcers. The state’s failure to comply with the relevant standards may lead to the limitation of the provision of international legal assistance in criminal matters on the basis of reciprocity on the part of other members of the world community.

The necessity of correlating constitutional norms on the inviolability of the person with the traditions of national criminal procedural law, as well as international legal acts in this area has been established in Belarus. A to-be-extradited person should be deprived his (her) personal freedom solely on the basis of a reasoned court decision. A person should be guaranteed information about both his rights and the reasons for depriving him of his fundamental right.

4 The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of the Court of Justice of the European Union, available at: http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/case-lawanalysis/The%20principle%20of%20Ne%20Bis%20in%20Idem%20in%20criminal%20matters%20in%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20(Sept.%202017)/2017-09_CJEU-CaseLaw-NeBisInIdem_EN.pdf, accessed on 25 September 2022.

Considering that the CCP has equalised the rights of the parties, all conditions must be created for the establishment of a trusting relationship between the client and the defence lawyer, including by permission of involvement of a subject close to the client's cultural and linguistic space in order to consult the person to be extradited.

It is necessary to consider the operation of the *ne bis in idem* principle in the transnational dimension, which can be seen in individual international treaties aimed at combating certain types of crimes. As a basis, we advice to take the requirements developed by the Court of Justice of the European Union in its decisions.

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