



## The Extradition and the Possibility to "Suspend" to be Granted to Romania

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**Abstract:** *The possibility to accept the proposal forwarded to the European Parliament on January 22<sup>nd</sup>, 2018, for sanctioning the Romanian state by suspending granting the extradition to suspects to Romania is analysed in this study and the author's opinion related to this proposal is also presented.*

**Keywords:** *extradition, suspension, request, proposal, suspect*

A report with proposals addressed to the European Parliament for taking certain measures, not pleasant at least, against Romania, as EU member state, was published on January 22<sup>nd</sup>, 2018. The report had been issued by a former member of the staff of the European Parliament in the period 2004 – 2014<sup>2</sup>. It considered the respective report as "an accusation for convicting both UE, as it did not manage the reforms necessary for the admission of Romania – which have not been fully implemented ever, as well as the authorities of Romania", as it is provided in the quoted source.

The report reviews the situation existing in the law system from our country and in its penal judicial system, by highlighting some case studies in order to underline the politicisation of the Romanian penal judicial system and the difficult situation from the Romanian penitentiaries, giving as examples the case of a Romanian citizen with serious health problems who, after being extradited to Romania from the United Kingdom of Great Britain, deceased shortly after in the penitentiary system. The report highlights that the real separation of the powers in the state did not succeed in Romania and that an objectionable treatment would apply to the suspects during detention, within the penal judicial system. Among the final proposals of the report it is included the one of a "moratorium on extradition to Romania of suspects until such time as the European Court

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<sup>2</sup> Gary Cartwright, at present also editor of Eu Today on-line publication.

of Human Rights deems that the Romanian penal system fully meets EU standards"<sup>1</sup>.

According to the legal dictionary, *the moratorium* represents that "legal institution according to which a court of law has the possibility to suspend, at the request of the bankrupt, the execution of the decision to declare bankruptcy, in order to give it time to try to correct its patrimonial situation so that to fulfil the interests of its creditors". Accordingly, it can be observed that the *moratorium* term is not related to the penal procedure but is used in commercial area. We believe that its usage in this context can be considered as a synonym to the "*suspension*" term of the decision to grant the extradition to Romania, in its capacity as applicant state, by the petitioned state. We cannot see how we could interpret or understand the *moratorium* term in any other way, considering its legal definition. According to it, the Court of Law, as we said, can grant a *suspension* of the execution of a certain Court decision, but *at the strict request of the bankrupt*. In the case of extradition, where we speak about the state petitioned to and about the state applicant of the extradition of a person, we cannot see who could formulate such a request.

This proposal drew our interest, more exactly, the possibility to accept such a *suspension* and which would be the legal grounds for its decision?

As it is well known, the extradition is a form of international legal cooperation in the penal domain through which a petitioned state accepts to surrender to another state, applicant, a person found on the territory of the first and which is in the second one, as case maybe, penally prosecuted for an offence (suspect), put on trial for an offence (defendant) or wanted for executing a condemnation (convicted). In what concerns the legal nature of extradition, it is mainly, we believe, a sovereignty act of the state to which it is requested, but at the same time, is a penal law institution with double character, i.e. of penal international law and of internal penal law. It is an institution of internal penal law because both the conditions that are imposed for request and granting, as well as the granting procedures, submit to the internal laws of the states (as well as those provided in the multi or bilateral international treaties). The states accept extradition, some based on reciprocity (as it is the case of Romania) and others conditioned by the existence of a Treaty (such as The Netherlands or Great Britain, for example).

At European Union's level, in what concerns the international judicial cooperation in penal matters between the Member States regarding

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<sup>1</sup> "a moratorium on extradition to Romania of suspects until such time as the ECHR deems that the Romanian penal system fully meets EU standards"- see <http://eutoday.net>, [romanalibera.ro](http://romanalibera.ro)

extradition, it is relevant the European Convention of Paris on extradition, dated December 13<sup>th</sup>, 1957 and its additional protocols concluded in 1975 and 1978, as well as the Convention on the simplified extradition procedure from 1995<sup>1</sup> and the Convention on the simplified extradition procedure between the EU member states from 1996<sup>2</sup>, through which derogations had been brought to the Convention from 1957 and simplifications of this procedure between the Union's states had been made. This Convention, after providing that the contracting parties commit to surrender reciprocally, based on the rules decided by it, the persons which are penally prosecuted for an offence or wanted for the execution of a conviction or for safety measures by the judicial authorities of the applicant party (in art. 1), provides the facts that can draw extradition, the causes of refusal to extradite (connected to the nationality of the person who's extradition is requested, the place of committing the offence, the existence of a prosecution in progress for the same deed, *non bis in idem*, the prescription of the action or of the punishment, capital punishment, according to art. 6-11. The Convention also provides the possibility of the petitioned state that, in case of a contest of applications, to decide the subsequent extradition to another state. At the same time, the Convention acknowledges to the petitioned state the right to "refuse", motivated, totally or partially, the received request (in art. 8, point 2). In the Convention is also provided the possibility of the petitioned state to delay or condition the surrender of the extraditable person, but in certain conditions, expressly provided by its art.19.

From the analysis of the Union's provisions regarding extradition, we find that the possibility *to suspend* granting the extradition to an applicant state by the petitioned state is not provided.

In the internal law of Romania on the international judiciary cooperation in penal matters no. 302/2004 with subsequent additions, applicable also to extradition as a form of this cooperation (according to art. 1, paragraph (1), letter a), the mandatory reasons for extradition refusal (in art. 21), the optional reasons for its refusal, the reasons for postponing the extradition and the possibility to delayed surrender of the extraditable person are provided, not being included, obviously, provisions contrary to the European Conventions in the area. However, there are not comprised provisions regarding the possibility to *suspend the suspects' extradition*.

Among the mandatory extradition refusal reasons provided by Law no. 302/2004, in its art.21, when Romania is the petitioned state, is the one

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<sup>1</sup> Dated March 10<sup>th</sup>, 1995, O. J. C78, 30.03.1995, p.2

<sup>2</sup> Dated September 27<sup>th</sup>, 1996, O.J. C313, 13.10.1996, p.12

regarding the case when “it was not complied with the right to a fair trial in the sense of the European Convention for defending the human rights and fundamental freedoms, concluded at Rome on November 4<sup>th</sup>, 1950, or in any other international instrument relevant in the area, ratified by Romania”. This treatment could be applied, we believe, based on reciprocity, by the EU member states to Romania. However, for this, as it results from the decisions quoted, it is required that the right to a fair trial in the sense of the mentioned convention has not been effectively and actually complied with. By analysing the mentioned legal provisions, we consider that a simple supposition of such a breach is not sufficient for a refusal towards an extradition request formulated with the compliance of the legal conditions.

In these conditions, as legal provisions for international judiciary cooperation in penal matters do not exist at European Union level, provisions related to the extradition procedure which would deal with the institution of “*suspending suspects’ extradition*” towards the applicant state, could such an institution be applied to the Romanian state, one of the member states of the Union? We believe the answer could be only in the negative, at least at present, due to lacking concrete legal grounds.

As a matter of fact, extradition is the oldest form of international judiciary cooperation in penal matters through which it is desired, by all member states which build the international community, to facilitate the close down of the penal phenomenon. Due to this, we believe that any extradition application which fulfils all necessary conditions – substantive and formal – should be allowed and any applicant state – the Romanian state in our case – has the obligation to fulfil in its turn all obligations assumed through the international treaties concluded and through its internal provisions. We consider as right if the respective state bears all consequences generated by not complying with the responsibilities it assumed and which are absolutely necessary. But this responsibility should be imposed taking into consideration the law and moral norms, as it cannot be sanctioned outside these limits and outside a legal framework existing previously.

## **References**

<http://eutoday.net,romanialibera.ro>