

Alina Varianychenko
B. Zygmunt, research supervisor
S.I. Kostrytska, language adviser
Lazarski University, Warsaw

Administrative Stage of Extradition Proceedings in the Legal Systems of Selected Contemporary States

There is no universal regulation of the stages of extradition proceedings in the legal systems of contemporary states, in particular, there is no universal regulation of the administrative stage of this procedure.

The extradition procedure of Great Britain is regulated by the Extradition Act 2003, amended by the Crime and Courts Act 2013, which came into force in July 2013. In the United Kingdom's legal system, the first stage of extradition proceeding is conducted by the Secretary of State, who performs initial check of the extradition request. If there is a valid request for the extradition (the request is valid if it meets the conditions of section 70 (3), (4) and (7)), Secretary of State must issue a certificate of a person to the foreign state under the section 70 (1) of the Extradition Act 2003 and send documents to the appropriate judge under the section 70 (9). *A contrario* if the request for the extradition is not valid, the Secretary of State must not issue a certificate of a person to the foreign state and send documents to the appropriate judge, and therefore, the extradition procedure will be finalized.

If the judge decides that there are no juridical obstacles towards the continuation of the procedure of the extradition (section 79), the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 and the extradition would be in the interests of justice (section 83a (4) *a maiori ad minus*) - the proceeding goes into the administrative stage and the Secretary of State makes the final decision on the motion of the foreign State.

The decision of the Secretary of State *a priori* can not be arbitrary and discretionary, because the situations in which the extradition is inadmissible or may be refused are exhaustively enumerated, and are clearly and unambiguously worded.

A decision of the judge or the Secretary of State may be questioned in legal proceedings under the section 116. It is also possible to appeal for the decision making under the section 116.

The Polish extradition procedure includes three stages, which are regulated by chapter 65 of the Polish Code of Criminal Procedure - act of 6th of June 1997.

The first stage is referred to as 'quasi-preparatory phase'. At this stage the state prosecutor shall examine the surrender and, if necessary, secure the material evidence in the country, whereupon he shall file the case with a District Court having territorial jurisdiction over the case (art. 602 § 2 of the Polish C.C.P.).

The second stage is the jurisdiction phase. The jurisdiction stage of the extradition procedure is a two-stage procedure. District Court, after checking if the extradition is inadmissible or not (whether there are any of the enumerated in the art. 604 § 1 of the Polish C.C.P. obligatory grounds for the refusal to extradite), shall

issue an opinion on the motion of the foreign State. The surrender has the right to appeal under the decision of the District Courts. Besides it is also possible to make a cassation complaint to the Polish Supreme Court. It is important, that only the General Prosecutor-Minister of Justice and the Ombudsman have the right to make a cassation complaint.

District Court refers the valid and final order together with the files of the case to the Minister of Justice. Making the decision, the Minister of Justice may take into account not only the situations in which the extradition may be refused (art. 604 § 2 of the Polish C.C.P. contains non-exhaustive list), but also as political factors. This decision is final and not subject to appeal (decision of the Constitutional Court of Poland from 21th of September 2011, case no. SK 6/10; separate opinion of judge Zbigniew Cieslak). The Ukrainian extradition procedure is regulated by chapter 42 and 44 of the Ukrainian Code of Criminal Procedure. Unless otherwise specified by the international treaty of Ukraine, central authorities of Ukraine for extradition shall respectively be the Prosecutor General's Office (for extradition of a prosecuted person in order to conduct criminal proceedings against him) and the Ministry of Justice (for extradition of a prosecuted person in order to execute a penalty or a preventive measure previously imposed). Administrative authorities verify if the extradition of a person to a foreign state shall be refused under article 589 of the Ukrainian Code of Criminal Procedure, which contains non-exhaustive list of the obligatory grounds for the refusal of extradition. At the moment of taking the decision on the motion of the foreign State the administrative stage of the extradition procedure ends, and – if there is no appeal from the surrender against that decision – the extradition procedure ends too. Then, in the Ukraine extradition procedure the court is almost completely omitted, and the role of the court is limited to the outcome of the complaint against the decision of the public administration body, which complaint may be, but not always will be, lodged.

All things considered, it is clear that the administrative stage of the extradition procedure (then the political and international aspects are taken into account) plays an important role in this procedure. Carrying out a comparative analysis of relevant provisions of the legal systems of contemporary states makes possible to create the “ideal model of the extradition procedure” – the model which will guarantee that the institution of extradition does not become a political tool. Against the background of the comparison of legal provisions governing the extradition proceedings, only British extradition provisions ensure protection of the rights of the surrender. The Polish and Ukrainian extradition proceedings require urgent legislative changes to enrich them with new comprehensive and complementary legal solutions. It is necessary to introduce regulation to the provisions of the Polish C.C.P. which would give the surrender the right to appeal against the decision of the Minister of Justice. Provisions of the Ukraine C.C.P. in turn should contain the obligatory jurisdiction stage of the extradition proceedings. The decision of the administrative authorities must be a subject to instance assessment, which is particularly important in cases where the decision is probably arbitrary and discretionary.