

*Veaceslav URSU, PhD*  
*univ. prof., chief commissioner*  
*Dean of Faculty of Law,*  
*Public Order and Civil security*  
*Academy "Stefan cel Mare", Moldova*

*Review Paper*  
*Received: 1 December 2021*  
*Accepted: 10 March 2022*  
*UDK: 341.44*  
*<https://doi.org/10.47152/rkkp.60.1.8>*

## THE LEGAL NATURE OF EXTRADITION AND EXPULSION, CONSTITUTIONAL AND CRIMINAL JUSTICE REGULATION

*The study examines the extradition and expulsion, analyses the constitutional and criminal justice regulations of the legal institutions under consideration, identifies their particularities and the reveals their legal nature. Based on the identified features, the author tried to highlight the essential similarities and differences of the institutions concerned, in order to finally discover and describe the legal nature of expulsion and extradition.*

**Keywords: expulsion, extradition, international treaties, conditions of reciprocity, the legal regime of foreigners and stateless persons, international legal assistance in criminal matters, security measure.**

### 1. Introduction

Extradition and expulsion are often confused when these two institutions have to be applied to in connection with certain persons. They are similar, but in the same time, they differ according to their procedure and the subjects to which extradition and expulsion apply. Because of this confusion, we frequently see how

journalists and everything related to media<sup>1</sup>, police officers, prosecutors and judges misunderstand the real meaning and the applicability of these two institutions in practice. Even if the legislative framework covers these differences and explains the application procedure, sadly, it often happens that the victims of these errors are not offered the legal and available guarantees and end up suffering due to lack of knowledge.

According to the legal framework that is governing these two institutions, in particular the Criminal Code of the Republic of Moldova, we distinguish the following statements:

- 1) Extradition does not apply to the citizens of the Republic of Moldova and persons granted political asylum in the Republic of Moldova [1, art.13].
- 2) Foreign nationals and stateless persons who have committed crimes outside the territory of the Republic of Moldova, but who are located on the territory of the Republic of Moldova, may be extradited only on the basis of an international Treaty to which the Republic of Moldova is a party or under conditions of reciprocity under the court decision, only if there are serious grounds for believing that they are at risk of death, torture or other inhuman or degrading treatment.
- 3) Expulsion is applied to foreign citizens and stateless persons who have been convicted of crimes and can be barred from remaining on the territory of the Republic of Moldova [2, art.105].

## **2. Constitutional principles on extradition and expulsion**

The Constitution of the Republic of Moldova states in article 15 that the citizens of the Republic of Moldova take advantage of the rights and freedoms confirmed in the Constitution and other laws and have the obligations lay down therein. In this context, we would like to express our view on the protection of RM citizens abroad and their right not to be extradited or expelled from the country.

Thus, para. (2) of article 18 of the Constitution of the Republic of Moldova stipulates that citizens of the Republic of Moldova benefit from state protection both at home and abroad. As it is confirmed in the Constitution, this principle is

---

1 One of the most resounding case related to extradition/expulsion and a wrong application of the procedure is the **CASE OF OZDIL AND OTHERS v. THE REPUBLIC OF MOLDOVA**, where the Court stated that there had been a violation of Article 5 § 1 (right to liberty and security) and Article 8 (right to respect for private and family life), holding that the applicants had been deported/expelled by illegal transfer which had failed to comply with all national and international legal guarantees.  
[https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-193614%22%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-193614%22%7D)

the natural and logical consequence of the political relationship between citizens and the state. This is a constant connection; it spreads and works wherever the person is, in his or her home state or in another state.

This principle also applies to cases where RM citizens can, or even commit offenses in another state's territory, and of course in cases when they are committed against them or against their rights and freedoms. According to the citizen's membership of the Moldovan state, citizens of the Republic of Moldova enjoy state protection abroad, as they have the constitutional right to ask the Moldovan authorities for appropriate protection. That is, the authorities of the Republic of Moldova abroad have the constitutional obligation to offer them the necessary protection. This does not mean, however, that by exercising this obligation, the respective Moldovan authorities must or may in some way undermine the sovereignty of the State on whose territory the citizens of the Republic of Moldova are located, the latter are obliged to respect the law order of that state. When enjoying state protection, Moldovan citizens must fulfil their obligations under the laws of the state in which they are located, including the laws of Moldova.

Therefore, this principle must be understood in an international context, since the cooperation of states in this field is carried out on the basis of bilateral or even international conventions and agreements., the Constitution of the Republic of Moldova stipulates in Article 19 on the protection granted to foreigners and stateless persons in R. Moldova, that foreigners and stateless persons have the same rights and duties as citizens of the Republic of Moldova, with the exceptions set by law. In other words, R. Moldova grants foreigners and stateless persons, the so-called national regime, according to which foreigners and stateless persons, as mentioned, have the same rights and obligations as their own citizens, with exceptions determined by law, for example, to fill up exclusive political rights (for example, to hold a public office), as well as some constitutional requirements for citizens of the RM (e.g., country defense obligation).

A constitutional right belonging exclusively to foreigners or stateless persons is that of political asylum.

Paragraph (2) of article 19 of the Constitution of the RM stipulates that the right of asylum shall be granted and withdrawn in accordance with the law, in compliance with the international treaties to which the Republic of Moldova is a party. This regulation is intended to demonstrate the alignment of Moldova with intentional standards in the protection of human rights and fundamental freedoms.

People who contribute, through their work on ensuring peace, progress and humanity in general, and who are persecuted for these activities in the states they are located, or whose citizens they are, are also logical to find shelter and defense in another state.

The general rule accepted by international humanitarian law is that asylum is granted to foreign nationals or stateless persons wanted or persecuted for political activities. This means that not all foreigners or stateless persons who come to Moldova will receive political asylum. The name itself of this institution indicates the type of activity carried out by the person, i.e. political activity, so if it is found that the reasons for requesting asylum are not legal, asylum will not be granted (for example, the citizen is followed for ordinary law). Similarly, persons wanted for crimes against peace and humanity or war crimes will not be able to enjoy this right.

Foreigners or stateless persons may be extradited only on the basis of an international Convention or on the basis of reciprocity pursuant to the judgment of the court (paragraph (4) of article 17 of the Constitution of the RM).

At the same time, paragraph (3) of article 17 of the Constitution of the RM stipulates that citizens of the Republic of Moldova may not be extradited or expelled from the country.

The constitutional provisions stated were taken over by the legislator and incorporated in the text of the criminal law in the art. 13 CC of the RM.

Extradition and expulsion are two serious measures which substantially affect and restrict the right to individual freedom and free movement.

Article 25 para. (1) of the Fundamental Law declares that the individual freedom and security of the person are inviolable, and art. 27 of the Constitution states and guarantees the right to free movement, i.e., the right of every citizen to establish his residence in any place of the country, to leave, to emigrate and to return to the country. Whereas, extradition and expulsion essentially limit these rights.

We will analyze more in details the extradition as a measure of forcing someone to leave the country when wanted for serious crimes and requested by another state for its investigation or prosecution. The institution of the extradition by a state of persons who have committed criminal offenses to another foreign state has long been known to international law. Regarding the place of extradition as a legal institution in the system of international law, interpretations of researchers are equivocal.<sup>2</sup> Sometimes extradition is considered to be a secondary institution that has outlived its existence. But crime is developing, becoming cross-border, organized crime is establishing new contacts; criminals who have committed crimes in one country are hiding in another, are permanently changing their place of life and are gaining support and assistance from their "fellowship". All of this makes extradition a very actual issue.

---

2 Special attention is paid to this institute by scientists, members of the international criminal law association. This issue was discussed especially at the colloquium in Helsinki (September 1992), which was in preparation for the International Congress of this association which took place in Rio de Janeiro in 1994.

At the same time, the tendency of some countries not to extradite their citizens, who have committed crimes abroad, even if they do not have diplomatic immunity, is highlighted. Other countries, on the contrary, extradite their criminals (their own citizens) in a way to make easier for them to re-socialize.

The legal nature of extradition is irregularly understood. Some scholars consider extradition to be a matter of administrative law, because often the ruling on the application of extradition is not the court, but the government or another state body. At the same time, extradition can also be considered as an element of criminal procedure law, as we are dealing with the order of transmission of the person who committed a criminal offense to another country under certain procedural guarantees. Extradition can also be considered as part (institution) of criminal law, i.e., serving the sentence.

The laws of different countries address the issue of extradition differently. For example: In Italy and Romania the rules on the extradition of criminal offenders included in the Criminal Code. The criminal code of the Russian Federation and of the Republic of Moldova, there is also an article on extradition.

The extradition of criminals is mentioned in the Constitution of Russia, France, Germany, Ireland, Italy, Portugal, Spain, including in the Constitution of the Republic of Moldova.

In practice, the issues of extradition to European countries, as a rule, are decided by the courts. At the same time, many countries are putting in place extraordinary trials, or are being tried on an ad hoc basis.

This is mentioned in the laws and legal literature of Austria, Denmark, France, Portugal, Switzerland and Spain.

The issue of extradition arose for the first time in connection with the expulsion of diplomats who committed crimes or other legal violations beyond the borders of their countries. The notion of "diplomatic immunity" emerged as a new legal institution, then the circle of subjects was widened, and this immunity is spread over. Subsequently, the "right of non-extradition" was granted to persons who applied for political asylum in other countries and who have previously committed crime in countries they left.

Many scholars criticize this institution, citing the following arguments: Conventions on extradition between states often go against the Human Rights Pact. A typical example of this inexpediency is the case when there are discussions between countries on extradition, which last for long periods of time, even years, and the citizen, whose guilt is not yet proven, is deprived of liberty all these years.

This is why the globally recognized principles and standards contained in the human rights agreements must be included in the extradition conventions, with due regard for the national laws of the states. However, it is clear that in the fight

against international crime, without the application of the institution of extradition, it will be very difficult to operate.

Generally, the states resolve the issue of extraditing offenders by ratifying bilateral or regional treaties. There are many bilateral conventions on extradition between different states. For example, the Republic of Moldova has concluded such conventions with Romania, the Russian Federation, Ukraine, Belorussia, the Baltic States, and other European states, including Turkey, Israel, etc.; Romania has bilateral treaties and conventions with about 29 states in the world, including Moldova in 1997, Germany - Yugoslavia (1970), Germany - Australia (1987).

One of the regional treaties is the Convention on the extradition of offenders, 1966, concluded by members of the British Community of nations.

The former USSR had a number of agreements on legal assistance with several countries, including Korea, Hungary, Poland, Romania, Mongolia and so on.

However, it should be noted that in some conventions, the chapters on extradition have a general formulation without any necessary concretization, which makes it difficult to extradite offenders. Legal assistance conventions, in principle, have a broader content than extradition conventions. They also discuss issues relating to administrative, civil and other legal fields, through which economic, interstate and other relations are regulated. These conventions often contain the reference that one or other issue, including the issue of extradition, must be resolved and further regulated separately.

There are several general conventions on the issue of extradition in the world.

### **3. Substantive conditions of extradition and expulsion provided by national and international legal acts**

In 1957, the European Convention on extradition was adopted in Paris. In 1975, the additional protocol to this Convention was adopted in Strasbourg, which centralized some issues. In Strasbourg, the second additional protocol to the same Convention was adopted in 1978. The Council of Europe is aiming at a common understanding of the issue of extradition between the countries of Europe, followed by the third additional Protocol, ratified in Strasbourg on 10 November 2010 and signed by the Republic of Moldova on 12 April 2013. Apart from the Paris Convention, there are also other treaties and arrangements which solve the problems of extradition. For example, the 1983 Strasbourg Convention on the Exchange of persons who have committed crimes; then, those in Brussels in 1987, 1991.

Extradition is therefore the act whereby a state, in whose territory a criminal has been taken refuge, hands over that offender, at the request of another state to be tried or serve the sentence to which he was convicted by the courts of that state.

Extradition therefore appears as a bilateral act between two states: one in whose territory the offender is located and to which the extradition request is addressed (the requested state) and another, which is interested in punishing the offender and which addresses the extradition request (requesting state) for this purpose.

Extradition is, by its finality, an act of international judicial assistance in extranational matters, whereby a criminal is transferred from one state to another for being tried for the offense committed or for serving the sentence to which he or she was convicted.

From this definition, the following features of the institution of extradition shall be separated:

1. An act of sovereignty interfered in relations between two states;
2. A judicial act sought and awarded only to bring about repression, the extradited person being a defendant or a person convicted of a criminal offense;
3. International legal assistance;

It follows that extradition has a complex (mixed) legal nature, not only as an act of legal assistance but also an act of sovereignty, including a court act. Following a definition adopted at the 10th Congress of the International Criminal Law Association held in Rome in 1969 "extradition is an act of inter-state judicial assistance in criminal matters, aimed at transferring a prosecuted or convicted individual, from the area of the judicial sovereignty of one state to the area of the other state".

Extradition is, therefore, a sovereign element of the state, which can admit or refuse to hand over a foreign criminal who is on its territory. When there is a treaty between two parties, the question of extradition is resolved quite clearly: if the person does not have diplomatic immunity, then he or she must either be tried or be handed over to the requesting state (party). But there are more difficult situations: when the authorities of a state, extraditing the offender, are not sure that the person sent to the home state, will be punished. There is no extradition treaty between these countries. In this case, a process of discussions is initiated, during which the person/criminal will be held for a long time in prison until his trial.

As an impediment to extradition may be the essential difference between punishment measures for the same offenses in different countries; the confidence of the state representatives (who transmit or receive the offender) that the person will be or is subjected to torture, and so on. Many treaties or conventions on legal assistance state not only for extradition (transmission of the offender) but also for refusal to extradite, for example, article 8 of the Convention provides that a

requested party may refuse to extradite a person wanted, if that person is also under his or her prosecution for the same criminal actions.

Article 546 CPC of the RM confirms that the RM is under an obligation to comply its national law with the provisions of the Convention and States and states in paragraph (2) that extradition will also be refused if:

- 1) The offense is committed in the territory of the Republic of Moldova;
- 2) in respect of that person, a national court or a court of a third state has already issued a sentence, a decision of acquitting or terminating the criminal proceedings for the offense for which the extradition is requested, or an order of the criminal prosecution body to cease or to carry out criminal investigation of this deed by the national bodies;
- 3) the limitation period for the imposition of criminal liability for the offense in question under national law has been completed or amnesty has been granted;
- 4) according to the law, prosecution can only be started on the prior complaint of the victim, but such a complaint is missing;
- 5) the offense in respect of which extradition is sought is considered by national law to be a political offense or a related offense;
- 6) The General Prosecutor, the Minister of Justice or the court dealing with extradition has serious grounds for believing that: a) the extradition request has been made for the purpose of following or punishing a person on grounds of race, religion, sex, nationality, ethnic origin or political opinion; (b) the situation of this person is likely to be aggravated on one of the grounds referred to in (a); c) if the person is to be extradited, he or she will be subjected to torture, inhuman or degrading treatment or will not have a fair trial in the requesting country;
- 7) the wanted person has been granted refugee or political asylum status;
- 8) the requesting state does not ensure reciprocity in the sphere of extradition.

If the act for which extradition is requested is punishable by the law of the requesting country with the death penalty, the extradition of the person may be refused unless the requesting party gives sufficient assurances that the death penalty will not be imposed on the prosecuted or convicted person [3, art. 546].

The offender himself often insists on his more urgent extradition, first of all, as the prison regime in the country where he wishes to be extradited is more "free" than in the country where he or she can send him or her. The question of extradition is resolved by combining the principle of territoriality (place of crime and place of offender) and the citizenship of that person. From our point of view, the basic principle for extradition must be regarded as the principle of citizenship,



that is to say, the principle of personality of criminal liability does not apply to the territorial principle.

The principle of citizenship has been presented in the new Criminal Code of the Republic of Moldova (article 13) where it is mentioned that citizens of the Republic of Moldova who have committed crimes abroad cannot be extradited from the country and are liable for criminal liability under this Code. The law follows from the fact that the behaviour of the citizen R.M. who has committed crimes is considered a criminal not only by the criminal law of the foreign state but also by the criminal law of the R.M. The outright ban on extraditing R.M. citizens to foreign states, on whose territory the crime was committed, is based on the principle of citizenship of applying criminal law in space, provided in article 11 CC of the R.M.

As regards foreigners and stateless persons who have committed crimes outside the territory of the Republic of Moldova and are on the territory of the Republic of Moldova, may be extradited only on the basis of an international Convention to which the R.M. is a party of or on the basis of reciprocity.

The persons mentioned may be extradited to the foreign state, either for criminal purposes or for serving the sentence applied to them in the requesting state. According to the general rule, this action is carried out by the competent organs of the R.M. in accordance with the bilateral conventions of the R.M. on legal assistance, in which the issue of extradition is specifically regulated.

In such a case, the requested state on whose territory the offender is located shall, at the request of another (applicant) state, limit its jurisdiction over that person and transmit it to the requesting state. The request for extradition may be based on the fact that the offender is a citizen of the requesting state or has committed the offense within its territory, or even outside its territory but against its interests.

The first statement is often based on article 17 of the Constitution of the R.M. which mentions that the citizens of the Republic of Moldova cannot be extradited or expelled from the country.

According to the article 6 para. (2) of the European Convention on extradition (Paris 13.12.1957; additional Protocols (Strasbourg 15.10.1975, 17.03.1978)), if the requested party does not extradite its own national (citizens of the Republic of Moldova), it shall, at the demand of the requesting party, submit the case to the competent authorities so that judicial proceedings may be conducted if necessary. To this end, the files, information and objects concerning the offense shall be transmitted free of charge by the route stated in article 12 para. (1). The requesting party shall be informed of the results of its request [4, European Convention on extradition].

Paragraph (4) Article 546 CPC stipulates that if the Republic of Moldova refuses extradition, upon the request of the requesting state, the possibility shall be examined to take over the criminal investigation in regard of the person who is a citizen of the Republic of Moldova or a stateless person.

Finally, we will name some fundamental principles on extradition accepted by the international community:

1. consistent respect for human rights in the conventions and treaties on extradition, their conformity with the human rights conventions;
2. the incorporation into national law of basic human rights, as provided for in international conventions on extradition;
3. the cautious attitude toward extradition in cases of possible usage of capital punishment to the offender (in some countries' laws it is expressly indicated in the law that extradition will not be permitted if, after the offender's transmission, the death penalty will be applied to him).
4. Strict compliance in the conventions on extradition and in its application practice with the minimum rules of conduct with prisoners recommended by the UN
5. the extradition exclusion to countries where torture is applied on convicted or cruel treatment is admitted;
6. exclusion of extradition to countries where there is discrimination on grounds of race, religion, social and so on;
7. stimulate extradition to countries guided by the principle of humanism, including to persons who have committed crimes.

Extradition is a useful tool in the fight against crime.

Without it, the enforcement of criminal law under the principle of territoriality could not be carried out in cases where, after committing the crime, the perpetrator managed to leave the territory of the country.

It would also not be possible to enforce criminal law on the basis of the principle of personality of criminal liability. According to the provision of article 13 C.C. of the R.M. extradition is granted or may be requested by our state to another state either on the basis of an international convention to which the R.M. is a party of or on the basis of reciprocity. Regulating the plurality of legal sources, the provision in the article 13 C.C. establishes the order in which these sources must function, first, the conventions, then reciprocity. In Romania in their absence there is domestic law.

Criminal law does not therefore contain provisions relating to the conditions for extradition, giving priority to international conventions and practices in the field of extradition.

In the absence of a special convention and law, the conditions of extradition shall be those presented by international law on the basis of international law.

The terms of extradition shall be divided into basic and formal terms. The basic conditions of extradition involve: a criminal offense is committed; a person is identified, the accused is proved to be guilty of, or that he has been involved in the offense; it may be possible to impose a criminal penalty on this person or to have a criminal conviction of the person concerned.

The typical basic conditions of extradition may be supplemented, by supplementary provisions of the conventions or by law, by certain specifications or limitations which constitute the complimentary framework of the normal conditions.

Extradition, involving the consent of the states between which they intervene, is essentially an institution of international law and must therefore find its place in international conventions or in the practice of relations between states. When the regulation of extradition is ruled by the International Convention, that regulation shall enforce the rules of international law.

The procedure Code of the Republic of Moldova and its provisions confirm the above. Thus, according to article 531 CPC [5, art.531] the provisions of the international treaties to which the Republic of Moldova is a party of and other international obligations of the Republic of Moldova will have priority in relation to the provisions of this chapter.

If the Republic of Moldova is a party to several international acts on legal assistance also signed by the state from which the legal assistance is requested or by the state requesting it, and if there are discrepancies or incompatibilities between the norms of these acts, the provisions of the treaty ensuing the more beneficial protection of human rights and freedoms shall apply (Article 531 para. (2) CPC).

The Paris Convention on extradition (13.12.1957), which has been in force for the RM since 31.12.1997, provides for the order of preference in the granting of extradition. It may be interested in obtaining the extradition of an offender and thus be a requesting state:

- the state of which the offender is a national;
  - the state in whose territory the crime was committed;
  - the state against the interests of which the offense has been committed;
- The requested state — is the state where the pursued offender is located.

The order of preference shall be as follows:

- The offender is first transmitted to the state on whose territory the offense was committed;
- Secondly, preference shall be given to the state whose interests were harmed by the committed offense;
- The state of which the offender is a national.

The provisions presented are fully in conjunction with the provisions of article 9-11 of the Paris Convention:

➤ Article 9 *Non bis in idem*.

Extradition shall not be granted when the requested person has been definitively tried by the competent authorities of the requested Party, for the act or facts for which extradition is requested. Extradition may be refused if the competent authorities of the requested party have decided not to pursue or to terminate the prosecution they intended on the same or similar conduct.

➤ Article 10 *Prescription*.

Extradition shall not be granted if the prescription of the action or penalty is completed in accordance with the law of either the requesting Party or the requested Party.

➤ Article 11 *Capital punishment*.

If the offence on which extradition is requested is punishable by death according to the law of the requesting party and if, in such a case, that penalty is not found in the requested Party's law or is not normally enforced there, extradition may be granted only on the requesting party's assurances, considered as appropriate by the requested party, that the death penalty will not be enforced.

In turn, expulsion is the safety measure provided for by the criminal law, which consists of removal from the territory of R. Moldova.

The Article 105 CC of the RM stipulates that foreigners and stateless persons who have been convicted of crimes may be banned from staying in the territory of the country. As a security measure, expulsion aims at removing a danger and preventing the commission of crimes stipulated in the criminal law.

In case of expulsion, the situation of danger may have the source either in the nature or in the seriousness of the offense (espionage or other criminal offense against the state) or in the personality of the perpetrator, who is a foreign national or a stateless person. When applying expulsion measures, the judge must not simply find that the perpetrator is a foreign or stateless person, but must reach the conclusion that the state of danger emanating from this person can only be removed by forcing the foreigners or stateless person to leave the territory of the Republic of Moldova.

Sometimes there may be cases where the danger of further offenses appears from the foreign victim's quality rather than the offender's author, in the sense that not the fear that this alien may commit a new offense materializes the danger, but the fear that other people, outraged by the presence of the foreign offender in the country, after serving the sentence, could react violently against him, commit crimes and disturb public order.

The expulsion safeguard measure can only be applied in several conditions:

- the offender should be a foreign citizen or a stateless person (person without citizenship). This quality must exist at the time of the trial, because if

the foreign citizen or the stateless person at the time of the trial acquired citizenship of the Republic of Moldova, he can no longer be expelled because, on the basis of article 17 of the Constitution of the Republic of Moldova, "the citizens of the Republic of Moldova cannot be extradited or expelled from the country", a postulate, that has already become a principle of law.

- the foreign citizen or stateless person has been convicted of an offense. It does not matter whether the offense is committed within or outside the territory of the RM. The important thing is that our courts are competent to judge the case in accordance with the principles of the application of criminal law in space (territoriality, reality, universality).
- the presence of the foreign citizen or stateless person on the territory of the RM should be the source of a dangerous situation, the removal of which is possible only by expelling him from this territory.
- the person is not subjected to inhuman or degrading treatment or punishment in the state he is to be expelled. This condition, which has been the subject of multiple examinations by the European Court of Human Rights, and which also applies to extradition [See the case of *Soering v. The United Kingdom*, 5, pag. 31], requires the judge to be certain when deciding on expulsion that it will not infringe article 3 of the ECHR, that is, the person will not be exposed in the state where he or she is exposed to a real risk of inhumane treatment.

This condition is impossible to comply with in cases of expulsion in states where the person risks the death penalty. In this context, the Court of Strasbourg decided that the exposure of the person to the "death blind syndrome" [See the case of *Cruz Varas and others v. Sweden*, [5, pag.31-32]], constitutes a treatment or punishment incompatible with article 3 of the Convention.

The article 105 para. (2) CC of the RM stipulates rules on applying the "expulsion" measure imposed on a person sentenced to imprisonment: "In the event that expulsion accompanies a punishment of imprisonment, the expulsion shall be enforced only after the punishment is executed".

The article 105 para. (3) requires the judge a further condition for applying expulsion - when adopting such decision the person's right to privacy shall be considered. Thus, the respect for the right to privacy may invalidate the legality of the expulsion measure if the foreign citizen or the stateless person is married to a citizen of the RM, has children or has adopted children who are citizens of the RM and who are resident in the RM, and this measure trigs them from leading a normal family life. The action must also be considered and motivated in relation to the attempt to preserve other values – public order, safety or others, when it is

the case of a foreigner who has been on the territory of the RM for a long time, where his parents, other relatives, also reside, especially if he didn't leave contact with them. In such a situation, expulsion set them apart and, although he tries to remain in contact with them by correspondence, there is an infringement of the right to respect family life, guaranteed by paragraph (1) of the article 8 of the ECHR [See the Moustaquim v. Belgium case, [5, pag.333]].

#### **4. Conclusion**

In conclusion, the analyzed institutions have certain similarities but differences can also be identified, which distinguish them from each other.

First of all, both institutions have their origin in the Basic Law, in the sense that they are regulated by the Constitution of the Republic of Moldova, being taken over by the criminal legislation and defined in the Criminal Code of the Republic of Moldova.

As a consequence of their application, the person guilty of a criminal offense shall be expelled from the territory of the state he has domicile.

Secondly, expulsion and extradition are also ordered by a court ruling. Both institutions operate on a post-factum basis, i.e., after the person has committed an act prescribed by the criminal law. Both extradition and expulsion are nominal, that is to say, targeted at a specific person, identified by law enforcement bodies. Foreign nationals or stateless persons may be extradited or expelled; the law prohibits the extradition and expulsion of their own nationals or foreigners and stateless persons who have been granted political asylum in accordance with the legislation in force. They will be refused if the bodies of the recipient state have sufficient reason to believe that the person, in the state where he is extradited, will be subjected to torture, inhuman or degrading treatment or punishment.

At the same time, by its legal nature, extradition is a form of international legal assistance in criminal matters, expulsion is a security measure. For this reason, their aims differ: expulsion is intended to remove a danger and prevent the person from committing new offenses, extradition is intended to secure the act of bringing justice – either to hold the person to criminal liability and to impose a criminal penalty on him or to serve the sentence imposed, with the offender having a conviction in the requesting state.

Extradition demands a request from the requesting state, expulsion is the initiative of the state on whose territory the crime was committed and which considers that the person's remaining on its territory will result in danger that must be removed.

Expulsion is applied in relation to persons convicted of offenses, and In the event that expulsion accompanies a punishment of imprisonment, the expulsion shall be enforced only after the punishment is executed, but extradition is carried out in relation to the accused or convicted persons, whether they have been held criminally liable or have served their sentence in the requesting State.

In the event of expulsion, the person may, in some cases, choose the country of destination to which he is to be expelled, but in case of extradition, the offender will be transferred to the requesting country without alternatives.

When deciding on the expulsion of persons present in paragraph (1) of the article 105 CC of the RM their right to privacy shall be considered, the rule on extradition does not contain any express provision on this.

The request for extradition is made under the international treaty the Republic of Moldova and the requested state are party of, and vice versa, or under written obligations on a reciprocal basis; expulsion being ruled by national law.

Finally, the wider application of both extradition and expulsion will make a substantial contribution to the administration of justice, the enhancement of international relations and cooperation between states, the fighting against and preventing crime at national but also at international, cross-border and transnational levels.

## References

- Berger, V. (1997) *Jurisprudence of the European Court of Human Rights [Jurisprudența Curții Europene a Drepturilor Omului]*. Bucharest: Romanian Institute for Human Rights Publishing House
- <http://drept.usm.md/public/files/Dreptpenalgeneral3acfb.pdf> (accessed on 12.07.2021);

### *International and national legislation consulted:*

- European Convention on extradition, Paris 13.12.1957, in force for the Republic of Moldova from 31.12.1997;
- Constitution of the Republic of Moldova no.1 from 29.07.1994, in force from 29.03.2016;
- Criminal Code of the Republic of Moldova no. 985 from 18.04.2002, in force from 2003;
- Criminal Procedure Code of the Republic of Moldova no.122 from 14.03.2003;

