

## PASSIVE EXTRADITION – A FORM OF INTERNATIONAL JUDICIARY COOPERATION IN CRIMINAL MATTERS

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**Abstract:** *One of the most important objectives of the European Union is the creation, maintaining and development of a space of liberty, security and justice, objective which can be attained only under the circumstances of achieving a specific cooperation activity in the criminal system among the member states. Consequently, the conjugation of efforts of all the member states aimed at the judiciary cooperation in the criminal system represents an objective necessity, each state being practically obliged to take the necessary measures.*

*In this respect, in Romania, the ranging of internal legislation to the norms of the community acquis began by adopting the Law nr. 302/ 2004 which regulates the following forms of international judiciary cooperation in the criminal system: extradition, rendition on a basis of an European warrant, the transfer of procedures in the criminal system, the acknowledgement and enforcement of sentences, the transfer of the convicted persons, the judiciary assistance in the criminal system.*

*Of all the above mentioned forms of judiciary cooperation, the present study aims at analyzing the passive extradition.*

**Keywords:** *criminal law, criminal processual law, extradition, international judiciary cooperation.*

**JEL Classification:** *K 14; K 4; K 42*

Under the circumstances when more and more offences are committed in a state by foreign citizens and under the circumstances when transnational organized delinquency gained weight since the opening of borders, the international judiciary cooperation with regard to criminal matters constitutes together with constabulary cooperation, the only efficient way to reciprocity this phenomenon.<sup>2</sup>

The international juridical instruments which apply in the extradition domain are The European Convention of Extradition, concluded at Paris on the 13-th of December 1957 and its additional Protocols, adopted at Strasbourg, on the 15-th of October 1975 and on the 17-th of March 1978. These had been ratified by Romania, in 2001, the year when the Law nr. 296/2001 on extradition<sup>3</sup> had been adopted. The situations in practice imposed the necessity of harmonizing the national legislation with the community acquis, a fact which

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<sup>2</sup> Vasile Păvăleanu, *The European Judiciary Space* in R.D.P. nr. 2/2004, p.44.

<sup>3</sup> Published in the Official Gazette nr. 326 from the 18<sup>th</sup> of June 2001.

generated the elaboration of the Law nr. 302/2004 – a frame law in the domain of international juridical cooperation.<sup>4</sup> This abrogated the above mentioned normative act and consecrated besides extradition, the rendition on a basis of an European warrant of arrest, the transfer of criminal procedures, the acknowledgement and enforcement of decisions, the transfer of the convicted persons and judiciary assistance as forms of international judiciary cooperation in the criminal domain.

Taking into consideration the contents of art. 9 of the Criminal Code which shows that „extradition is granted or can be requested on the basis of international convention, on the basis of reciprocity and, in case of their absence, under legal bases”, it can be considered that the institution of extradition belongs to criminal law. However, by the procedure implying extradition before judiciary authorities, it also belongs to criminal processual law, too.<sup>5</sup> This procedure mainly develops on the basis of the European Convention of Extradition and according to the stipulations of title II from the Law nr. 302/2004 concerning the international judiciary cooperation which distinguishes two forms of extradition: passive extradition and active extradition. Since the frequency of cases in the judiciary practice, as regards the requests of different foreign countries to extradite citizens involved in proceedings in criminal matters or even to send up for trial while on our territory is very high, we understand to analyze passive extradition – as a form of international judiciary cooperation throughout the present paper.

### **1. General rules of passive extradition**

Passive extradition represents a form of extradition by means of which, at the request of a foreign country, the persons on the territory who are involved in criminal proceedings or send up for trial for having committed an offence, or are searched with the view to serve a sentence or a security measure in the applicant state, are extradited from Romania.

The following categories of persons are *excepted from the extradition from Romania*<sup>6</sup> :

- Romanian citizens<sup>7</sup>, if legal conditions and requirements of their extradition are not met; we have to specify that according to the art. 24 from the Law nr. 302/2004 Romanian citizens can be extradited from Romania on the basis of multilateral international conventions to which the country is a part and on a basis of reciprocity, if the person to be extradited, either resides on the territory of the applicant state at the date of the formulated request or, has also the citizenship of the applicant state, or committed the offence on the territory or against a citizen of a member state of the European Union, if the applicant state is a member of the European Union. If the person in question resides on the territory of the applicant state or committed the offence on the territory or against a citizen of a member state of the European Union, when the extradition is solicited with a view to effectuate criminal proceedings or the trial, as an additional condition, the applicant state must provide sufficient guarantees<sup>8</sup> that, in case of a sentence to prison by an definitive court's sentence, the extradited person will be transferred with a view to serve the sentence in Romania.

- the persons to whom the right to asylum in Romania had been granted ;

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<sup>4</sup> Published in the Official Gazette nr. 594 from the 1<sup>th</sup> of July 2001.

<sup>5</sup> Camelia Șerban Morăreanu, *Processual Criminal Law*, Publishing house Hamangiu, București, 2009, p. 292.

<sup>6</sup> According to art. 23 par. 1 of the Law nr. 302 from 2004 as regards the international judiciary cooperation in the criminal matters.

<sup>7</sup> According to the art. 23 par. 2 of the Law nr. 302 from 2004 as regards international judiciary cooperation in criminal matters, the quality of Romanian citizen or political refugee is appreciated at the date of the definitive sentence on extradition. If this quality is admitted between the date of the definitive sentence and the understood date of rendition, another sentence will be given in the case.

<sup>8</sup> According to the art. 24 par. 4 of the Law nr. 302/2004, The Ministry of Justice can request the production of an act issued by a competent authority of the applicant state.

- the persons with immunity from legal proceedings, within the conditions and limits settled by conventions or other international agreements;
- the foreign persons cited from abroad for hearing as parts, witnesses or experts before a Romanian applicant judiciary authority, within the limits of the immunities of the international conventions.

As the art. 24<sup>1</sup> from the Law nr. 302/2004 stipulates, *the extradition will be refused as binding force* in the following cases:

a) the right to a fair trial had not been respected within the meaning of the European Convention on Human Rights and Fundamental Freedoms<sup>9</sup>, or of any other international relevant authority in the field, ratified by Romania;

b) there are serious reasons to believe that extradition is solicited with a view to institute proceedings or to punish a person on race, religion, sex, nationality, language, political or ideological opinions or membership to a certain social group reasons;

c) the situation of the person is likely to aggravate due to the above mentioned reasons at let. b);

d) the request is formulated in a case being on the docket of extraordinary law courts, others than those constituted by relevant international bodies, or with a view to serve a sentence applied by such a court;

e) the extradition refers to an offence having a political nature<sup>10</sup> or to an offence associated to a political offence;

f) refers to a military offence which cannot be defined as a common law offence.

Although it cannot be found within the cases mentioned by the law, the judiciary practice offered another situation when extradition is refused – if, according to the law of one of the contractor parts, the prosecution cannot be completed (e. g., the person subject to extradition had died).<sup>11</sup>

Without being mandatory, *the extradition can be refused*<sup>12</sup> when the act which motivates the request is the subject of a criminal case in progress or when this act can be the subject of a criminal case in Romania. Also, the extradition of a person can be refused or delayed, if his rendition implies possible severe consequences, especially, related to his age or state of health.

We have to specify that the refusal of extraditing its own citizen or the political refugee obliges the Romanian state, at the request of the applicant state, to submit the case to its judiciary competent authorities, in order to exercise criminal proceedings and trial, when necessary.<sup>13</sup>

<sup>9</sup> Concluded in Rome on the 4<sup>th</sup> of November 1950.

<sup>10</sup> Art. 24<sup>1</sup> par. 2 of the Law 302/2004 stipulates that political offences are not the following:

- a) the attempt to kill the head of a state or a member of his family;
- b) the crimes against humanity stipulated by the Convention for the prevention and suppression of the crime of genocide, adopted on the 9-th of December 1948 by the General Assembly of the United Nations;
- c) the offences stipulated at art. 50 from the Convention of Geneva from 1949 in order to improve the situation of the wounded and the sick of the army at war, at the art.51 from the Convention of from 1949 for the improvement of the situation of the wounded, the sick and the castaways of the maritime forces, at the art. 129 from the Convention of Geneva from 1949 as regards the treatment of the prisoners of war and at the art. 147 from the Convention of Geneva from 1949 as regards the protection of the civilians during war periods;
- d) any similar violations of the laws of war which are not stated by the dispositions from the conventions of Geneva stipulated at let. c); of the European Convention for the repression of terrorism, adopted at Strasbourg on the 27-th of January 1997, and in other relevant international instruments;
- f) they offences stipulated in the Convention against torture and other cruel punishments and treatments, inhuman or degrading adopted on the 17-th of December 1984 by the General Assembly of The United Unions;
- g) any other offence whose political character had been eliminated from the international treaties, conventions or agreements to which Romania is a part.

<sup>11</sup> The Court of Appeal Cluj, Criminal Dpt., sentence nr. 8 from the 3<sup>rd</sup> of March 2004, *Collection of Judiciary Practice 2004*, Publishing house Lumina Lex, București 2005, p. 771.

<sup>12</sup> Art. 24 of the Law nr. 302/2004 as regards judiciary cooperation in criminal matters.

<sup>13</sup> According to the art. 25 par.1 thesis 2 of the Law nr. 302/2004, in this case, the applicant state is likely to send free of charge to the Ministry of Justice from Romania the files, information and objects regarding the offence. The applicant state will be informed about the result of its request.

In case Romania refuses the extradition of a foreign citizen, accused or sentenced in another country for one of the offences stipulated in the art. 85 par.1 of the Law nr. 302/2004<sup>14</sup> or for any other offences for which the law of the applicant state stipulates a sentence of prison whose special minimum is at least 5 years, the examination of the own competence and the exercise, if necessary, of the criminal proceedings are done ex officio, without exception and without delay.

When the admissibility of the extradition request is entailed, the following issues have to be taken into consideration:

a) Double incrimination;<sup>15</sup> The extradition can be admitted only if the act for which the person was accused or convicted is stipulated as an offence both by the law of the applicant state as well as by the law of the Romanian state. By way of exception, extradition can be granted if the respective act is not stipulated by the Romanian law, under the circumstances in which for this act the request of double incrimination is excluded by an international convention to which Romania is a part.

b) The gravity of punishment;<sup>16</sup> Extradition is granted in Romania, with a view to criminal prosecution or trial, for acts whose commitment implies a prison sentence of at least one year according to the legislation of the applicant state and to the Romanian law, and with a view to execute a sentence, only if the sentence has at least a four month term. If the act for which extradition had been solicited is sentenced with a death penalty by the law of the applicant state, the extradition can be granted by the Romanian state only within fully satisfying guarantees that the death penalty will not be carried out and will be subsequently commuted.<sup>17</sup>

c) The punishment of suspended sentence;<sup>18</sup> The person convicted to a prison sentence with a conditional suspended sentence can be extradited in case of a partial suspension, if the fraction of punishment to be served corresponds to the exigencies of gravity above mentioned and there are not legal impediments at extradition.

d) The absence of the prior complaint;<sup>19</sup> The extradition is not granted in case when, according to the Romanian legislation and also to the legislation of the applicant state, the criminal accusation can be initiated at the prior complaint of the injured person and this person opposes extradition.

e) The right to defense;<sup>20</sup> Romania will not grant extradition when the person to be extradited would be tried in the applicant state by a court which does not guarantee legal safeguards of fundamental procedures and protection of the right to defense or by a court constituted for the respective case, or if extradition is solicited with a view to execute a sentence given by such a court. In case when the solicited extradition refers to a person who has to execute a sentence given in default of appearance, the Romanian state can refuse extradition, if it considers that the trial procedure ignored the right to defense given

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<sup>14</sup> The offences stipulated at the art. 85 par. 1 of the Law nr. 302/2004 are: participation in an organized terrorist group, terrorism; trafficking in human beings; sexual exploitation of children and infantile pornography; illegal trade of drugs and psycho trope substances; illegal trade of weapons, ammunitions and explosive substances; corruption; fraud including the fraud against the financial interest of European communities, within the meaning of the Convention from the 26 - of July 1995 regarding the financial protection of the European communities; laundering of the products of the offences; counterfeiting of currency, euro included; acts related to the electronic criminality; acts regarding the environment, including the traffic with species and animals and plants on the verge of extinction; facilitation of illegal entrance and stay; murder , assault and battery ; illegal traffic of human organs and tissues; illegal deprivation of liberty, abduction and taking of hostages; racism and xenophobia; organized theft or robbery; illegal traffic of cultural values, including antiquities and works of art; embezzlement; counterfeiting and goods piracy; forgery of official documents and use of forged official documents; forgery of means of payment; illegal traffic of hormone substances and other growth factors; illegal traffic of nuclear or radioactive substances; traffic of stolen cars; rape; arson; offences under the jurisdiction of the International Criminal Court: illegal sequestration of ships and airplanes; sabotage.

<sup>15</sup> Art. 26 of the Law nr. 302/2004.

<sup>16</sup> Art. 28 of the Law nr. 302/2004.

<sup>17</sup> Art. 29 of the Law nr. 302/2004.

<sup>18</sup> Art. 30 of the Law nr. 302/2004.

<sup>19</sup> Art. 32 of the Law nr. 302/2004.

<sup>20</sup> Art. 33 of the Law. 30/2004.

to any person accused for having committed an offence.<sup>21</sup> However, extradition will be granted if the applicant state can provide sufficient legal safeguards in order to ensure a new trial procedure for the person to be extradited, which will guarantee the compliance with the right to defense. The decision of extradition entitles the applicant state either to pass to a new trial of the case, in the presence of the accused person if he agrees, or on the contrary, to institute proceedings against the extradited person.

f) Prescription<sup>22</sup> Extradition is not granted in case when the prescription of criminal liability or the prescription of enforcement of the sentence is fulfilled according to Romanian legislation or to the legislation of the applicant state. The submission of the extradition request breaks off the prescription previously unfulfilled.

g) Amnesty,<sup>23</sup> Extradition is not admitted for an offence which was subject to amnesty in Romania, if the Romanian state had the competence to institute proceedings.

h) Clemency,<sup>24</sup> the clemency act adopted by the applicant state makes inoperative the extradition request, even if all the other conditions of extradition are fulfilled.

We have to specify that if extradition refers to *an offence committed on the territory of a state other than the applicant state*, it can be admitted

- When Romanian law confers the competence of prosecution and trial to the Romanian judiciary authorities for similar offences, committed outside the territory of the Romanian state;

- When the applicant state proves that the third state on whose territory, the offence had been committed, will not ask extradition for the respective act.

## **2. The procedure of passive extradition**

The institutions concerned during extradition are:

- The Ministry of Justice<sup>25</sup>;
- The Prosecutor's Office of the Court of Appeal;
- The Courts.

### **2.1. The role of the Ministry of Justice**

In view of extradition, the competent authority of the applicant state addresses a written demand of extradition to the Ministry of Justice.<sup>26</sup> In exercising its central attributions of authority, by its department of specialty, The Ministry of Justice, performs the following activities:

- examines the extradition request and the annexed papers from the point of view of international regularity; The regularity examination is effected within a term of three working days from the reception of the request (or within 24 hours – in case of provisional arrest demands) in order to establish if there are conventional or reciprocity norms for extradition between Romania and the applicant state, if the documents stipulated by the applicable international treaty are annexed to the extradition demand, if the extradition demand and the annexed documents are accompanied by translations, and if there is one of the limits of granting judiciary cooperation.<sup>27</sup>

- It remits the extradition request and the annexed documents within at most 48 hours, to the Attorney General of the Prosecutor's Office of the Court of Appeal in whose circuit the person to be extradited resides or has been seen or, in case when the domicile

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<sup>21</sup> Art. 34 of the Law nr. 302/2004.

<sup>22</sup> Art. 35 of the Law nr. 302f/2004.

<sup>23</sup> Art. 36 of the Law nr. 302/004.

<sup>24</sup> Art. 37 of the Law nr. 302/2004.

<sup>25</sup> We specify that the present name is The Ministry of Justice and of Civic Liberties.

<sup>26</sup> According to the art. 38 par. 1 of the Law nr. 302/2004 as regards international judiciary cooperation in criminal matters, if the request is addressed diplomatically, it will be transmitted to the Ministry of Justice with no delay. Another possible way will be settled by direct agreement between the applicant state and the Romanian state.

<sup>27</sup> According to the art.3 of the Law nr. 302 from 2004, the application of this law is subordinated to the protection of the sovereignty, security, public order and other interests of Romania, stipulated by the Constitution.

of the respective person is unknown, to the Attorney General of the Prosecutor's Office of the Court of Appeal Bucharest.

- it returns the extradition request and the annexed documents, when necessary;
- it executes, in collaboration with the Home Office, the definitive judgment by which extradition had been entailed;
- it communicates the solution given to the extradition request or to the provisional arrest demand in view of extradition, to the central authority of the applicant state.

According to the art. 38 par. 2 of the Law nr. 302 from 2004 as regards the international judiciary cooperation in the criminal matters, the necessary documents to be annexed to the extradition request are the following:

- depending on the stage of the criminal case, the original or the legalized copies of the definitive judgment and of the order to execute the prison sentence, or the original or the legalized copies of the warrant of remand, of the charge or any other documents having equal legal value;
- the presentation of the acts which determined the extradition request; (date and place of commitment, juridical qualification and applicable legal dispositions);
- a copy of the applicable legal dispositions or a declaration as regard the applicable law;
- the most appropriate particulars of the person to be extradited and any other useful information to determine the identity and nationality of the respective person;
- dates regarding the duration of the punishment which had not been executed, in case of the extradition request for a person who executed only a part of the punishment.

The judiciary practice admitted as legal the decision by which the Court of Appeal refused the extradition request, when the authorities of the applicant state did not remit the original or the copy of the charge or of any other documents having legal value, and the documents remitted with the extradition request do not include the date and the place of commitment the acts, their juridical qualification as well as applicable legal dispositions and the declaration on the applicable law.<sup>28</sup>

Also, the supreme court decided that passive extradition is not conditioned by the existence of a definitive sentence of the person to be extradited given in the applicant state, but, according to the stage of the criminal case, a warrant of remand issued by the competent authorities of the applicant state and annexed to the extradition request is considered as sufficient. Thus, Romanian courts, while solution the extradition request, cannot examine the validity of the remand entailed by the competent authority of the applicant state, the competence of the Romanian state being limited to the verification of the performance of the conditions stipulated by the Law nr. 302/2004 on the admission of the extradition request, which do not concern the validity of the provisions entailed by the competent authorities of the applicant state.<sup>29</sup>

## **2.2. The role of the Prosecutor's Office of the Court of Appeal**

Within 48 hours from the reception of the extradition request and of the annexed documents, The Attorney General from the Prosecutor's Office of the Court of Appeal in whose circuit the person to be extradited resides or has been seen, or the Attorney General of the Court of Appeal Bucharest, or an attorney nominated by these above, proceeds to the identification of the respective person, to whom he hands out the warrant of arrest as well the other documents remitted by the authorities of the applicant state.

Without being mandatory, a remand can be entailed against the identified person for at most 24 hours. In the case when the disposition of remand has been taken by the

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<sup>28</sup> The High Court of Cassation and Justice, Criminal Dpt., decision nr. 6976 from the 9<sup>th</sup> of December 2005, The Bulletin of Cassation nr. 2/2006, p. 72.

<sup>29</sup> The High Court of Cassation and Justice, Criminal Dpt, decision nr. 274 from the 18<sup>th</sup> of January 2007 unpublished.

criminal investigation body of the judiciary police, this one is obliged, within the first 10 hours from the remand, to present the followed person, to the competent attorney.<sup>30</sup>

Whether the provision of remand has been taken or hasn't been taken, the attorney refers the matter to the competent Court of Appeal without delay in order to appreciate on the *provisional arrest*<sup>31</sup> in view of extradition.

### **2.3. The role of the courts**

The Court of Appeal in whose circuit the person to be extradited resides or has been seen is the competent court to pass the sentence of provisional arrest and of the extradition request, or in case the domicile of the respective person is unknown, the competent court is The Court of Appeal Bucharest. The request for provisional arrest in view of extradition and the extradition request is solutioned by a chamber made up of a single judge of the criminal department of the competent court.<sup>32</sup> The procedure of passive extradition has the character of an emergency and develops also during the judicial holiday. We have to mention that according to the. 43 of the Law nr. 302 from 2004, in the procedure of passive extradition, the applicant state is represented by the central authority and by the Home Office from Romania. At the express request of the applicant state, his representatives can participate to the solutioning of the extradition request, with the approval of the competent court.

#### *The provisional arrest*

As concern the provisional arrest which is referred to the instance, we have to specify that it *is entailed and can be prolonged* by the same chamber invested with the solutioning of the extradition request, through a conclusion, and the total term of the provisional arrest cannot exceed 180 days. After the judge has entailed the arrest, he will also issue an warrant of provisional arrest in view of extradition.

During the solutioning of the extradition request, the court verifies periodically, but not later than 30 days, the necessity of maintaining the provisional arrest, having the authority to entail, when necessary, *the maintaining of the provisional arrest or its substitution with the obligatorily of not leaving the country or the locality*. The provisional arrest is replaced by the provision of not leaving the country or the locality only in well-grounded cases and only if the court appreciates that the person to be extradited will not try to abscond from the judgment of the extradition request.

Once the extradition request is admitted, the court entails the arrest of the person to be extradited in view of rendition.

The provisional arrest *ceases de jure* if the person to be extradited is not taken over by the competent authorities of the applicant state within 30 days from the understood date for rendition.<sup>33</sup> In this case the court entails at once the absolution of the extradited person and informs about this provision The Ministry of Justice and The Centre for International Judiciary Cooperation within The Home Office.

The conclusion through which the taking, maintaining, substitution or the abandonment of the provisional arrest had been entailed in view of extradition can be attacked separately by appeal, within 24 hours from the adjudication. The case will be remitted to the court of appeal within 24 hours and the appeal is tried within 3 days from the record of the case. The appeal declared against the conclusion by which the taking or the maintaining the provisional arrest had been entailed is not enforcement of penalty.<sup>34</sup>

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<sup>30</sup> According to the art. 47 of the Law nr. 302/2004.

<sup>31</sup> According to the art. 45 of the Law nr. 302/2004.

<sup>32</sup> Art. 44 of the Law nr. 302/2004.

<sup>33</sup> Art. 59 par. 6 of the Law nr. 302/2004 stipulates an exception when although the person had not been taken over by the authorities of the applicant state, the provisional arrest does not cease. This fact happen in case of force major, which prevents the rendition or the taking over of the extradited person, situation when the Romanian authorities and the authorities of the applicant state will agree upon a new rendition date.

<sup>34</sup> Art. 45 par. 10 of the Law nr. 302/2004.

In case when the Romanian competent judiciary authorities issued an warrant of remand or an warrant of executing the sentence of prison against the person to be extradited, for acts committed on the Romanian territory, the warrant of provisional arrest in view of extradition becomes effective at the date when the person is released from the authority of the warrant of remand or of the execution of the sentence of prison.<sup>35</sup>

It has been decided that in case when the extradition request of a person convicted in Romania is admitted, the issuance of the warrant of provisional arrest is mandatory, irrespective of the punishment to be executed the person whose extradition is demanded. Thus, the provision of arrest shall enter into force after the execution of the sentence or when it is considered as executed. As such, the warrant of provisional arrest must be also issued in case when the person to be extradited executes a life sentence, due to the fact that the criminal law stipulates situations when the conviction for this punishment is replaced to a limited term sentence of prison during execution or when, following conditional release, after a certain period the punishment of the life sentence is considered executed, or when the convicted person is pardoned.<sup>36</sup>

#### *The judgment of the extradition request<sup>37</sup>*

The extradition request is tried by the Court of Appeal with the obligatory participation of the attorney who is obliged to contribute to the procuration of the necessary data and documents in order to establish if the conditions of extradition are satisfied. The session is open, if the person to be extradited or the judge do not oppose. The judgment of the request respects the following procedure:

- At the first time-limit, the court proceeds to take a declaration from the person to be extradited who will be assisted free of charge by an interpreter and by a public defender, in the absence of a chosen solicitor. After the interrogatory, the extradited person can either choose voluntary extradition or, to continue the procedure in case of opposition to extradition. The person to be extradited or the session attorney may ask the court an additional time-limit of another 8 days, on well grounded reasons.

- The person to be extradited has the right to declare before the court that he gives up the benefits conferred by the law to defend against the extradition request and that he agrees to be extradited and to be rendered to the competent authorities of the applicant state. The situation is known under the name of „voluntary extradition”. The declaration of the person to be extradited is consigned in a minute, signed by the president of the chamber, by the clerk of the court, by the extradited person, its solicitor, and by the interpreter. After the court ascertains that the person to be extradited is completely conscious of the consequences of his option, the court, also taking the attorney' conclusions, examines the possibility of an impediment which will exclude extradition. If it is ascertained that voluntary extradition is admissible, the court, records it by a sentence and entails at the same time the necessary preventive provisions until rendition. The sentence is definitive, is drawn up in 24 hours and is transmitted in legalized copy to the Ministry of Justice with no delay.

- If the extradited person opposes the extradition request, he will be able to formulate the defense orally or in a written form; at the same time he will be able to propound evidence.<sup>38</sup> After the hearing of the person to be extradited, the file of the case is remitted to his defender in order to present a written grounded opposition, within 8 days<sup>39</sup> to the extradition request and to indicate the means of probation, admitted by the

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<sup>35</sup> C.F., Mircea Crețu, *Provisional arrest in view of extradition*, in *Dreptul* nr. 6/2005.

<sup>36</sup> The High Court of Cassation and Justice, Criminal Dpt., decision. 320 from the 17-th of January 2005, *The Bulletin of Cassation nr. 3/2005*, Publishing house All Beck, București 2005, p. 77.

<sup>37</sup> Art. 48-53 of the Law nr. 302/2004.

<sup>38</sup> The means of evidence, permitted by the court will be administered within a term of maximum 15 days, in the presence of the extradited person, assisted by the defender and if necessary, by the interpreter as well as of the attorney.

<sup>39</sup> The opposition can be grounded only on the fact that the arrested person is not the followed person or on the fact that extradition conditions are not fulfilled.

Romanian law, the number of witnesses being limited to the number of two. Once the opposition presented, or after the deadline for its presentation expired, the attorney can ask a term of 8 days to answer the opposition or to administer evidence.

- If the information communicated by the applicant state proves to be insufficient in order to allow the Romanian state to give a decision for the application of the present law, the competent court will solicit the completion of the necessary information. To that end, the court will appoint a term of 2 months, with the possibility of reiteration of the request, and the admission of a last term of another 2 months;

#### *The solutioning of the extradition request*

In solutioning the case, competent The Court of Appeal can entail where appropriate<sup>40</sup>:

a) The admission of the extradition request; when this solution is given, the court entails at the same time the maintaining of the provisional arrest in view of extradition until the rendition of the extradited person. The decision by which the extradition is entailed is grounded within 5 days from the adjudication.

b) The refusal of the extradition request when the conditions of extradition are not fulfilled. When this solution is given, the court entails the release of the person to be extradited. The sentence is grounded within 24 hours and is transmitted to the Attorney General of the Court of Appeal who remits it to the department of specialty of the Ministry of Justice without delay.

We have to specify that the court is not competent to sentencing on the validity of the prosecution or conviction for which the foreign authority asks extradition or on the opportunity of extradition.

#### *The remedy against the decision on the solutioning of the extradition request*

The decision on extradition can be attacked with appeal by the prosecutor and by the person to be extradited within 5 days from the sentencing. The competent attorney general can declare appeal ex officio or at the request of the minister of justice. The appeal is tried at The High Court of Cassation and Justice within a term of at most 10 days, by a chamber made up of 3 judges. When it is declared against the decision by which the extradition request had been refused, the appeal is suspense of execution. The appeal declared against the decision by which extradition had been entailed is suspense of execution, with the exception of dispositions referring to the provisional arrest status in view of extradition.

After the trial of the appeal, the definitive decision concerning extradition is communicated to the Attorney General of the Prosecutor's Office of the Court of Appeal which tried the case at first instance and to the department of specialty of the Ministry of Justice.

#### *The effects of the decision concerning extradition*

The main effect of a definitive court sentence which entailed extradition is represented by the rendition of the extradited person to the competent judiciary authorities of the applicant state.

With a view to settle the date and the place of rendition, The Ministry of Justice communicates an extract of the definitive decision to the International Centre of Judiciary Cooperation without delay. The date of rendition will be communicated to the Ministry of Justice and to the competent court of appeal within 15 days from the date of the transmission of the court decision. In case when the date had not been fixed within 15 days, The Centre of International Judiciary Cooperation from the Home Office informs over the taken intercessions and reasons for which the date had not been fixed during this interval.<sup>41</sup> Excepting the case of force majeure when Romanian authorities and those of the applicant state will agree over a new rendition date, if the extradited person is not

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<sup>40</sup> According to the art. 54 from the Law nr. 302/2004.

<sup>41</sup> Art. 58 of the Law nr. 302/2004.

taken over at the established date, the person will be released at an end of 15 days, counted from this date; this term will be prolonged at most with another 15 days.

We specify that the Law nr. 302/2004 stipulates the situations when the rendition is delayed:

- the existence of a criminal trial before the Romanian judiciary authorities against the person to be extradited; the court ascertained the fact and decided that a criminal trial before the Romanian judiciary authorities started against the person to be extradited does not prevent the voluntary extradition. Taking into account this hypothesis, the rendition can be delayed, and in case of delay, the extradition can be effective only after the criminal trial has ended and in case of a prison sentence, only when after this sentence has been executed or considered as executed. The provisional arrest is entailed within 15 days starting from the date when the reasons of delaying rendition ceased.<sup>42</sup>

- The person to be extradited executes a sentence of prison

- When it is ascertained that, on a basis of a medical expertise, the person to be extradited suffer from an illness which would put his life in danger.

In case of delaying the rendition of the person whose extradition had been admitted, the court issues an warrant of provisional arrest in view of extradition. As we have already shown, in case when at the moment of admitting the extradition request, the extradited person is under the authority of an warrant of remand or of executing of a prison sentence issued by the Romanian judiciary authorities, the warrant of provisional arrest shall enter into force from the cessation date of the reasons which justified the delay.

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<sup>42</sup> The Court of Appeal Cluj, Criminal Dpt., sentence nr. 36 from the 15-th of September 2004, *Collection of judiciary practice 2004*, Publishing house Lumina Lex, București 2005, p. 773. Similar The High Court of Cassation and Justice, Criminal Dpt., decision nr. 5821 from the 14-th of October 2005, *The Bulletin of Cassation nr. 1/2006*, Publishing house C.H. Beck, București 2006, p. 54.