



Extradition of Criminals and Its Implementation with an Emphasis on the Afghan Extradition Law

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<http://dx.doi.org/10.18415/ijmmu.v13i2.7392>

Abstract

Extradition of criminals is a prominent example of international judicial cooperation, which is based on various foundations such as international treaties, custom and international practice, domestic laws, and general principles of law. It is carried out politically, judicially, and through mixed methods. To better implement this rule and institutionalize it, the legislators of countries and international procedures have considered conditions and principles such as non-extradition of nationals, political and military criminals, double criminality, respecting the rights of suspects and defendants, international conventions, the principle of specialty, prohibition of double jeopardy, etc. Afghanistan's legislator has approved the law in this regard and has concluded extradition agreements with various countries, including the United Arab Emirates, Tajikistan, and Iran. This research aims to explore the state of extradition of criminals in Afghanistan and identify its foundations, extradition methods, conditions, and general principles according to the Afghan Extradition Law, judicial cooperation of the Afghan government, and the extradition agreement between Afghanistan and the United Arab Emirates and the Islamic Republic of Iran. It appears that Afghanistan's extradition system is semi-judicial and semi-political-administrative.

Keywords: *Extradition of Criminals; System; Principles; Foundations; Agreements*

Introduction

Facilitation of travel and increasing transportation means have brought societies closer together than ever before but have also brought about problems. One of these serious and common problems is the commission of various crimes such as murder, kidnapping, armed robbery, fraud, human trafficking, etc., by professional criminals who swiftly flee thousands of kilometers from the crime scene within hours to evade trial and punishment. The escape of a criminal from punishment and their hiding in favored countries not only endangers the security and order of the crime scene but also causes irreparable harm to the victims. It turns the country into a safe haven for other criminals, thus disrupting its order, security, and tranquility. Governments and legal scholars have designed methods under the name of international judicial cooperation to prevent criminals from fleeing and avoid punishment, including judicial representation, establishing an Interpol police force, and extraditing criminals. This research focuses on

one aspect of judicial cooperation (extradition of criminals) based on the Afghan Extradition Law. Although there are still ambiguities regarding extradition of criminals and its execution and application, each country has adopted the principle of extradition based on international cooperation and has concluded agreements with other countries while observing national sovereignty. This study evaluates and answers questions about what forms the basis for extradition, what principles and rules govern it, how extradition is conducted, and what is Afghanistan's position regarding extradition. In this research, the concept of extradition and its historical background are discussed first. Then, the foundations and justifications for extradition are examined. The system and executive methods of extradition and the general principles governing it are presented along with the Afghan legislator's statement and an analysis of the extradition agreement between Afghanistan and the United Arab Emirates as well as the Islamic Republic of Iran.

1. Conceptual and Legal Meaning of Extradition

In the literal sense, "extradition" means taking back. (Langroodi, 2005: 35). "Extradition" is an Arabic word, derived from the root "radd," meaning "to seek to return." "Extradition, as a noun, means to demand rejection, request the return of a given item, reclaim, take back, retrieve, or recover" (Amid, 1983: 140). According to paragraph 1 of Article 3 of the Law on the Extradition of Suspects, Convicts, and Judicial Cooperation of Afghanistan, extradition is defined as: "The demand for the surrender of a suspect for the purpose of judicial pursuit or the surrender of a convict for the purpose of enforcing the sentence."

According to paragraph 34 of Article 4 of the Criminal Procedure Law of Afghanistan (2014), judicial pursuit means: "The pursuit of a criminal offense and its perpetrator, which includes investigative and prosecutorial actions, trial, and enforcement of the verdict." Therefore, extradition, according to Afghan law, encompasses a wide range and includes stages such as discovery, investigation, trial, and execution. The extradition of suspects is similar to the extradition of criminals and can be demanded. Even though the legislator of Afghanistan has not directly interpreted the extradition of criminals because criminals become convicts after trial and proof of their criminality.

In legal doctrine, extradition has not remained merely a literal concept but is referred to as a set of actions taken to return criminals from the country of residence to the country where the crime was committed. In legal terms, extradition of criminals refers to "reclaiming a criminal who has fled from one country to another by the requesting state from the state where the criminal has fled. This action is subject to an agreement between two states" (Abbasi, 1994: 18). Given the mentioned content, extradition can be defined as follows: "Extradition is the return of a criminal to a country where the crime was committed." Therefore, extradition of criminals is carried out by countries that either have jurisdiction over the crime within their territory or over the person involved or are affected by criminal acts. The state requesting the extradition of suspects or convicts must have a connection with the crime or criminal or victim (Sanaei, 2003: 205).

Extradition regarding universal jurisdiction, i.e., in cases where the country where the suspect was arrested has no connection with the criminal or victim and where the crime did not take place within its territory or against its fundamental interests, cannot demand the extradition of a criminal from that country. Perhaps this is why extradition laws and agreements do not anticipate such situations because the criterion for achieving universal jurisdiction is "place of arrest," and trial in absentia does not authorize universal jurisdiction (Pourbafrani, 2012: 210).

2. Historical Background of Extradition

Attention to states' interests, ensuring public order, and preventing criminals from escaping punishment are factors that have led to the issue of extraditing criminals. From ancient times, states have

taken advantage of this approach to apprehend criminals and prosecute them. The extradition agreement dates back to fifteen centuries ago when it was concluded between Prophet Muhammad (PBUH) and Abu Sufyan regarding the polytheists of Mecca. After the Hudaibiya peace agreement was signed between Prophet Muhammad (PBUH) and the polytheists of Quraish, and Prophet Muhammad returned to Medina: "Abu Basir Attaba Ibn Asid Ibn Jariyah, who had been imprisoned in Mecca, escaped from prison and fled to Medina. Quraish demanded his extradition based on the Hudaibiya peace treaty by sending letters requesting his return. The text of the letter and request for extradition was as follows: "O Muhammad! You know that we made a condition with you and took an oath among ourselves that whoever comes to you from our side should be returned. Now return our companion to us." According to the peace treaty, Prophet Muhammad handed over Abu Basir to Quraish and said: "O Abu Basir! We have a covenant with these people that there is no treachery in our religion, and God will provide relief for you and for those weak people who are your allies" (Tabari, n.d:1126).

One of the oldest recorded extradition agreements is the "Kadesh Peace Treaty," concluded in 1295 between King Hittite Hattusili III and Ramses II (Turkan, no. 28 and 29:232). Moreover, extradition of individuals who rebelled against the king and sought to deprive him of his throne was widespread. This extradition mainly aimed at preventing war mobilization and bloodshed and avoiding revenge (Akhoundi, 2010:343).

Today, due to the development of communication and ease of travel, the opportunity for criminals to escape from the country where the crime was committed to other countries has become more prevalent than ever before. Therefore, countries have entered into extradition agreements based on international treaties and have enacted laws domestically to execute these agreements. The Afghan government has also recognized this necessity and has concluded extradition treaties and judicial cooperation with other countries, and has enacted laws. The latest law regarding the rules and procedures of extradition was passed in 2012 under the title "Law on Extradition of Suspects, Convicts, and Judicial Cooperation".

3. Basis of Extradition of Criminals

The extradition of criminals, due to its importance in ensuring criminal justice and maintaining public order, is based on various foundations and principles that are briefly evaluated.

3-1. International Treaties

International treaties are not only considered as the most important source and basis in the field of international relations but are also recognized as the primary source in matters such as the extradition of criminals. In the Vienna Convention (1986), a treaty is generally defined as "a set of written regulations established by competent authorities to regulate the relations of subjects of international law and concluded by them through specific procedures". Therefore, an international treaty refers to any written international agreement concluded between two or more states based on international law, regardless of its specific name (agreement, treaty, covenant, protocol, charter, constitution, declaration, memorandum of understanding, exchange of notes, consent note, etc.). The Afghan legislator refers to this basis in Article 4 of the Extradition Law and states: "The extradition of suspects or convicts and judicial cooperation in dealing with criminal cases between the Afghan government and foreign countries is carried out based on agreements based on reciprocity or conventions to which the Afghan government is a party." As an independent political entity, the Afghan government has signed treaties regarding the extradition of criminals and judicial cooperation with other governments. Among these treaties is the extradition treaty with the Islamic Republic of Iran, the Russian Federation, Tajikistan, and the United Arab Emirates in 2010.

3-2. Domestic Laws of Countries

Most countries around the world have established laws for the extradition of criminals. In Afghanistan, the Extradition of Suspects, Convicts, and Judicial Cooperation Law was enacted in 2012 under the title "Law on Extradition of Suspects, Convicts, and Judicial Cooperation", which outlines the conditions and procedures for the extradition of suspects and criminals, as well as judicial cooperation with other governments. The purpose of formulating the extradition law is clearly stated in Article 2 of this law: cooperation with foreign countries in the detection of crimes, investigation and pursuit of suspects, gathering evidence of criminal offenses, the quality and manner of extradition of suspects and convicts, adherence to international conventions on the extradition of criminals, strengthening the rule of law and criminal justice, and Afghanistan's cooperation with other governments in preventing the commission of crimes are among the most important objectives of this law. This law is divided into two parts, with the first part covering trials, investigation stages, pursuit, detention, surveillance, and seizure of movable objects of suspects and criminals. The second part of this law pertains to the duration of sentences imposed by the courts that individuals must serve. This law includes criminals related to Afghanistan and foreign nationals, which is carried out based on the relationships and mutual cooperation between countries. Sending criminals and suspects along with witnesses, investigation documents, and evidentiary materials, considering personal and legal liability, conditions and obstacles to extradition, transfer of assets and movable objects, and joint cooperation are among other aspects addressed in this law.

3-3. General Principles of Law

General principles of law are recognized as a basis in all areas of international law. In the extradition of criminals, this foundation is also recognized at the international level. General principles of law refer to general rules that legal scholars consider when developing international rules and have played a valuable role in establishing international legal rules. International arbitration and judicial bodies have relied on these principles in various cases and benefited from them. Some of these principles include: respect for the independence of countries, precedence of international treaties over domestic law, recourse to domestic courts before resorting to international courts, freedom of communication, fulfillment of commitments, compensation for unjust damages, respect for the rights of others, etc. The Statute of the International Criminal Court also articulates general principles of criminal law through numerous provisions. In several articles of the Extradition Law in Afghanistan, reference is made to general principles of law and their observance. For example, in the third paragraph of Article 11, compliance with the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment regarding a person whose extradition is requested is mentioned as a primary condition for accepting extradition during investigation and trial. Furthermore, based on adherence to general principles of law, the prohibition of extraditing women or children is stated as a mandatory obstacle to extradition in Article 7 of the Extradition Law. Additionally, if a suspect or convict is subjected to torture or cruel, inhuman or degrading treatment or minimum guarantees provided in the constitution, other legislative documents in force, International Covenant on Civil and Political Rights, or international agreements to which Afghanistan is a party are not met in the requesting state, extradition by the Afghan government will not be possible (Article 5 of Article 25 of the Extradition Law (2012).

3-4. International Customs and Practices

International customs and practices are considered fundamental principles of international law and serve as a basis for extraditing criminals between countries. These international customs have historically facilitated the extradition of criminals among states until the emergence of general principles

of international law and the subsequent conclusion of international treaties between states. Customs are rules that have naturally evolved and are recognized by international countries as obligatory legal principles akin to statutory law. In the absence of treaties and laws, customs play a crucial role in international relations and are also frequently referenced in domestic legislation to regulate relationships.

3-5. Principle of Reciprocity

The fifth basis for extraditing criminals involves the principle of reciprocity with other countries, which is mandatory in all treaties and laws across nations. In some instances, countries have disregarded this principle solely for political reasons without any legal or treaty-based justification. When there is no extradition agreement or convention in place or when extradition based on mutual agreement between parties is not feasible, extradition solely hinges on reciprocity. This principle is explicitly provided for acceptance in Article 28 of the Afghan Constitution adopted in 2003: "No Afghan national shall be surrendered to a foreign state due to an accusation of crime, except based on reciprocity and international treaties to which Afghanistan is a party." Additionally, in Article 4 of the Extradition of Suspects, Convicts, and Judicial Cooperation Law, "reciprocity and mutual behavior" are stipulated as a criterion and foundation for extradition under the consideration of the Afghan government.

4. Methods of Extradition

Undoubtedly, implementing extradition treaties and laws requires a series of formalities, protocols, and procedures that facilitate operational extradition and other forms of judicial cooperation. Comparative studies of treaties, laws, and practices of countries concerning extradition and international judicial assistance indicate the use of administrative, judicial, and mixed methods. This section briefly evaluates these methods and the legislative choices adopted by Afghanistan.

4-1. Administrative - Political Method

Execution of extradition under this method is straightforward and devoid of formalities. It falls within the jurisdiction of executive authorities to assess the compliance with anticipated conditions in extradition treaties or laws, without involvement of judicial authorities. The operational mechanism is such that the Ministry of Foreign Affairs of the requesting country sends the extradition request directly to the residence of the person sought for extradition. The "Governor" reviews the extradition request and makes the necessary decision. If extradition conditions are not met, the extradition request is rejected, and the decision of the "Governor" is final and enforceable. However, if the "Governor" legally recognizes the extradition request and decides in favor of extradition, their decision is not final and is referred to the head of state. The head of state, considering the interests of the society and the country, may either approve or reject the decision, with extradition proceeding upon approval. This method is expedient for governments due to its administrative execution without judicial formalities, yet it may not be suitable in terms of respecting human rights, freedoms of the accused, and their rights to defense. Administrative authorities lack the professional competence of judicial bodies in criminal matters, and the lack of oversight over executive authority may lead to potential misuse and personal interests influencing decisions.

4-2. Judicial Method

Under this method, the examination of the extradition request and determination of necessary conditions are within the jurisdiction of judicial authorities. Additionally, the requested person is granted the opportunity to defend themselves by providing necessary evidence and documents, and if the

extradition conditions are not met, they can declare so. The accused can also choose a defense lawyer and have the freedom to consult with them. Judicial systems generally align more with principles of innocence, freedom, and respecting the rights of the accused. However, this method has its drawbacks, including delays in extradition due to the complete procedural stages in the courts of the requesting country and sometimes disregarding the role of the state in extradition matters.

The extradition of criminals is considered a legal rather than political issue by most legal scholars; however, in many cases, the political dimension of extradition is inseparable from its legal aspect and becomes apparent during execution and operation. In practice, the political dimension plays a significant role. Extradition of criminals is influenced by political issues and diplomatic relations between states. Because both the country committing the crime and the fugitive country suffer damage and sometimes other countries are affected, this is the case.

4-3. Semi-Judicial and Administrative Method

Today, most countries in the world utilize this system in extradition. The mixed system aims to preserve the advantages of both systems and eliminate their drawbacks, making it a practical system used in the majority of countries. In the phenomenon of extradition, both administrative procedures and political considerations, as well as judicial formalities to ensure freedoms and rights of the accused, should be taken into account.

It is worth noting that countries do not have a uniform procedure in adopting this system. In some systems, the judicial aspect of extradition is more emphasized, while in others, the administrative and political aspects are more prominent, and judicial opinions on extradition or non-extradition serve as advisory for the government (Azmayesh, 2003: 23). The practical method of the mixed or judicial system is such that the Ministry of Foreign Affairs of the requesting country sends the extradition request to the Ministry of Justice, which evaluates it in accordance with domestic laws and international treaties. If the extradition request is deemed compliant with domestic laws, international treaties, and especially the extradition treaty, it is forwarded to the final authority, namely the "Governor." The "Governor," after conducting professional and technical investigations, sends it to the residence of the criminal or suspect. If the person has not been previously detained or arrested, the residence "Governor" issues a detention order and later summons the person and informs them of the matter according to the extradition request. Furthermore, the residence "Governor" also announces the extradition trial process and court date. The residence "Governor" delivers a copy of the extradition request to the suspect or criminal and sends another copy to the relevant court. In any case, the person is summoned to court on a specified day, and the court, considering the reasons of the extradition request and how they are presented by the person's defense, makes a decision. This decision can either be non-extradition, in which case extradition does not occur, or extradition, in which case the person has the right to appeal and seek final judgment. Ultimately, the court's decision is sent to the head of state for final approval, and based on considerations of public interest, the head of state makes the final decision on extradition or non-extradition.

4-3-1. Extradition System and Procedures in Afghanistan

A study of Afghanistan's law on extradition of suspects, convicts, and judicial cooperation shows that Afghanistan's legislature has adopted a mixed system as its working method. Article five of this law stipulates that requests for extradition of suspects, convicts, and judicial cooperation under this law should be submitted through the Ministry of Foreign Affairs to the diplomatic representation of the relevant government residing in the country or through its Ministry of Foreign Affairs. Acceptance of a foreign government's request for extradition in these cases is also processed through these channels. According to Article nine of this law, requests for extradition of suspects or convicts from a foreign government fall under the jurisdiction of the "Governor" and are carried out through the Ministry of Foreign Affairs. Acceptance of a foreign government's request for extradition of a suspect or convict from

Afghanistan is proposed through the Ministry of Foreign Affairs to the "Governor." After conducting necessary evaluations, the "Governor" refers it to the Superior Court for final and definitive decision within its jurisdiction.

Therefore, the extradition system in Afghanistan's legal system is a semi-administrative and semi-judicial system. In this system, the extradition request from a foreign government is initially submitted to the Ministry of Foreign Affairs. According to Article twelve of the Extradition Law, the Ministry of Foreign Affairs is obligated to promptly send the request and its attachments to the relevant authority (Governor) after ensuring compliance with the conditions and principles governing extradition, as mentioned in Articles ten and eleven of this law. According to paragraph 2 of Article thirteen of the same law, the Governor carries out the following actions:

- 1- Assessment of the accusation presented in the request;
- 2- Collection of information about the personality and background of the accused for presentation to the foreign government;
- 3- Arrest of the requested person according to a valid court order and notification of the charges;
- 4- Conducting an investigation of the suspect or accused;
- 5- Presenting a proposal to the extradition court regarding the extradition of the accused.

According to paragraph three of Article thirteen of the Extradition Law, the Superior Court of Extradition can, based on the Governor's request and in accordance with the provisions of the law, issue orders for freezing or seizing any money found in possession of the accused during or after their arrest. Similarly, when the Afghan government requests the extradition of a suspect from a foreign government, the Governor gathers evidence of the committed crime and presents the extradition request to the Ministry of Foreign Affairs.

5. *The Principles Governing Extradition Agreements*

The principles governing extradition agreements are subject to rules and principles that some legal experts interpret as conditions, while others see them as obstacles to extradition. Some of these principles or obstacles are mandatory, while others are discretionary. In this regard, the principles governing extradition are evaluated based on Afghanistan's laws on the extradition of suspects and convicts, judicial cooperation, and extradition treaties between Afghanistan and other countries.

5-1. Non-Extradition of Nationals

Throughout history, it has been customary in international relations for states not to extradite their own nationals to another state for trial and punishment, even if the national has committed a crime within the jurisdiction of the requesting state. This principle is also considered in Afghanistan's laws on the extradition of suspects and convicts and its extradition treaties with other countries. For example, in paragraph 1 of Article 3 of the extradition agreement between the Islamic Republic of Iran and the Islamic Republic of Afghanistan, emphasis is placed on this matter. Moreover, Article 28 of Afghanistan's Constitution (2003) stipulates: "No Afghan shall be surrendered to a foreign state due to an accusation unless based on reciprocity and in accordance with treaties to which Afghanistan is a party." Additionally, paragraph 3 of Article 4 of the extradition agreement between Afghanistan and the United Arab Emirates (2010) states: "If the person in question is a national of either party to the request, the requested party may refuse extradition based on its national law."

The non-extradition of nationals is considered a mandatory obstacle in international practice and in many countries' laws and agreements. However, Afghanistan has not adopted a uniform policy on this matter. In the extradition agreement between Afghanistan and Iran, non-extradition of nationals is considered a mandatory condition, and extradition of nationals is absolutely not accepted. On the other hand, according to Afghanistan's Constitution and its extradition agreement with the United Arab

Emirates, extradition of nationals is considered a discretionary condition. In accordance with Article 28 of Afghanistan's Constitution (2003), both agreements comply with the Constitution and do not conflict with it. This is because, according to the mentioned article, non-extradition of nationals is considered a discretionary condition within Afghanistan's jurisdiction, which can be regulated by the government based on the agreement and its discretion.

5-2. Principle of Non-extradition for Political Crimes

This principle has been accepted by almost all governments because political criminals are usually ideological individuals who oppose the management of society and seek to reform and change the system. On the other hand, the harm from a political crime is to governance and the state, so surrendering them to a state that considers their political criminals as enemies is unfair. (Pourbafrani, 2012: 215) This principle is accepted in all extradition agreements between Afghanistan and other states. For example, Article 3, Clause 2 of the agreement between Afghanistan and Iran, and Article 4, Clause 1 of the extradition agreement between the Islamic Republic of Afghanistan and the United Arab Emirates, ratified in 2010, published in Official Gazette No. 1023. Also, individuals enjoying political asylum will not be extradited.

However, under these agreements, political criminals should not be confused with perpetrators of terrorist activities; violence is not present in political crimes. For example, Article 5 of the aforementioned agreement states that the following crimes are not political offenses:

- a: Crime against the state or chief of government or a family member or any member of the Federal Supreme Council of the United Arab Emirates or their family members.
- b: Act of terrorism.

5-3. Principle of Non-extradition for Military Crimes

Another principle accepted by the legislator in the extradition law and reflected in extradition agreements between states is the principle of non-extradition of military criminals. Military specific crime refers to disciplinary offenses. Such as disobeying orders, desertion, sleeping on guard duty, etc., which every country considers as criminal offenses for the sake of order and discipline. Since military specific crime is not inherently a crime but rather a contractual one, it is not extraditable. Paragraph 2 of Article 3 of the Extradition Agreement between Afghanistan and Iran adopted in (1389) states that if the crime committed is a military crime, it is not extraditable. Likewise, paragraph 1 of Article 4 of the Extradition Agreement between the Islamic Republic of Afghanistan and the United Arab Emirates adopted in (1389) does not consider military crimes as extraditable.

5-4. The Principle of Respect for International Obligations

According to the existing treaty between two or more countries, extradition takes place, and the requesting state is obliged to fully respect the provisions of the treaty; otherwise, the international commitment of the country in question has been violated. For example, if it is stipulated in the treaty that the death penalty should not be carried out or corporal punishment should not be imposed, the requesting state must fully comply with its provisions. In the Afghan Extradition Law, this is considered one of the mandatory obstacles to extradition and is stipulated in Article 25: "The extradition order shall not be issued by the Supreme Court in the following cases:

- 1-If there are sufficient grounds to believe that the extradition request for the accused is made for reasons of race, religion, nationality, political beliefs, or social position or that there is a likelihood of harm to his person as a result."

It is clear that if the requesting state fully complies with this principle, it entails rights and benefits for the accused. In other words, states are obligated to respect "human rights" in relation to criminals and are not entitled to violate the rights of criminals.

5-5. Respect for the Principle of Allocation

This principle has been accepted by many countries, meaning that if it is found after surrendering the criminal to the requesting state that the accused has committed another crime and the requesting country was not aware of it when making the extradition request, it cannot prosecute the accused for that crime unless it obtains consent from the country that extradited him. Article 6 of the Extradition Law states: "The extradited person shall be subject only to imprisonment or prosecution for an offense for which his extradition was requested. The commission of another crime after extradition is exempt from this rule." Paragraph 1 of Article 11 of the Extradition Agreement between Afghanistan and Iran also refers to this principle.

5-6. The Principle of Non-Extradition for Tried Persons

According to this rule, if someone has been tried and a final judgment has been issued by a competent court for an act, he should not be extradited again for the same act to another country for trial and punishment. This principle is mentioned in paragraph 5 of Article 11: "Avoid retrial of a person who has been requested for extradition due to committing a crime for which a final or definitive judgment has been issued by a court." According to the mentioned legal article, firstly, a final or definitive judgment is the criterion. So this rule does not apply even if it has been finalized in court, such as a decision to ban prosecution. Secondly, it must have been concluded, so if a country's court has only started proceedings but a preliminary judgment has been issued and has not reached finality, it does not prevent extradition and prosecution by other countries. However, according to paragraph 1 of Article 24 of Afghanistan's Extradition Law, even this recent case is considered one of the optional obstacles to extradition.

5-7. Principle of Non-Extradition If the Requesting State Is Competent

If the requesting state has jurisdiction over the crime based on its territorial, personal, protective, or universal jurisdiction, it can refuse to surrender the criminal to other countries. Paragraph 1 of Article 24 of the Extradition Law explicitly states: 'If the crime for which extradition of the accused is requested has been committed within the territory of Afghanistan in a complementary or relative manner and is considered a crime according to Afghan law, the Supreme Court can refrain from extraditing the criminal to a foreign country.' This is also mentioned in paragraph 3 of Article 3 of the Extradition Agreement between Afghanistan and Iran. If the crime has occurred within the territory of the requested party or if it has been prosecuted outside its territory and falls within the jurisdiction of the courts of the contracting party (other jurisdictions), the request for extradition will not be accepted.

5-8. Principle of Dual Criminality

One of the principles governing the extradition of criminals based on respect for sovereignty is compliance with the principle of dual criminality in extradition treaties. The legislator of Afghanistan has stated this principle in paragraph 2 of Article 11 and considered compliance with it as one of the mandatory conditions for extradition. According to this principle, a criminal act that is punishable according to the laws of both Afghanistan and a foreign country and carries a sentence of more than one year's imprisonment is considered an extraditable offense. This condition is also stipulated in paragraph (a) of Article 2 of the Extradition Agreement between Afghanistan and Iran: "The request for extradition

is based on acts that are considered crimes according to the law of both contracting parties and carry a maximum punishment of less than one year's imprisonment.' This condition is also provided for in paragraph 1 of Article 2 of the Extradition Agreement between the Islamic Republic of Afghanistan and the United Arab Emirates (1389).

The legislator of Afghanistan, while addressing dual criminality, has referred to another principle or condition, which is that the act committed should fall under extraditable offenses. In the past, an enumeration method was used to determine which crimes were extraditable, and often bilateral or multilateral treaties mentioned extraditable crimes. However, due to the development of international relations on one hand and an increase in the number and variety of crimes on the other hand, this method is no longer sufficient. Therefore, general criteria are used now, such as considering a sentence of more than one year for suspects and a one-year imprisonment sentence for convicts as prerequisites for extradition. Therefore, extradition is not applicable for minor crimes or sentences less than one year. Other conditions and principles such as reasons for criminal pursuit, prohibition of extradition for women and children, non-extradition based on political, racial, and religious motives, etc., are also envisaged by Afghanistan's legislator in extradition laws and bilateral agreements.

Research Findings

Extradition of criminals based on the necessity of international judicial cooperation constitutes an important subject in international criminal law and is subject to contextual and structural conditions in terms of action and implementation. In terms of context, it examines the nature of crime and which crimes are extraditable and which are not, as well as assessing the competency of the requesting state. Given international needs and achieving criminal justice objectives and preventing crimes, efforts are made today to limit non-extraditable crimes—for example, surrendering nationals or political or military criminals—and at least include them among discretionary obstacles.

"Examining the foundations and sources of extradition and its practical application through the conclusion of bilateral or multilateral international treaties is another theoretical discussion on extradition. Currently, it is rare to find a country that does not effectively utilize this measure to prevent and prosecute criminals beyond its territorial jurisdiction, which is why extradition agreements between states are increasingly on the rise. Formally and structurally, extradition traverses various administrative, judicial, and semi-administrative-semi-judicial processes. Nowadays, extradition in most countries involves both political and judicial aspects, meaning that the extradition request and its attachments are submitted through the Ministry of Foreign Affairs to the Attorney General, who as the executive authority examines it and submits it to a judicial authority such as the Supreme Court for jurisdiction, and the final decision rests with the Supreme Court, ultimately executed by government executive authorities.

Additionally, the most significant effect of extradition is to provide a basis for enforcing penalties against fugitive criminals. The existence of extradition regulations, especially the conclusion of bilateral treaties and agreements, ensures that criminals do not find refuge in fleeing the country to evade punishment and avoid facing charges. In fact, extradition is an action aimed at affirming and supporting the criminal and legal regulations of countries, resulting in societal security and adherence to the doctrine of social defense, ultimately preventing crimes and compensating victims for damages.

Given the aforementioned content, it appears that for the extradition of criminals between the Islamic Republic of Afghanistan and other countries to proceed effectively, Afghanistan's judicial system must firstly present the trial process of criminals and their handling in a dignified manner to international bodies. Secondly, Afghanistan needs to demonstrate its capability and cooperation in apprehending criminals on one hand and ensuring their fair trial on the other to international bodies and treaty parties to confirm that in the Islamic Republic of Afghanistan, fair trials are conducted, and the rights of criminals and suspects are respected in accordance with accepted legal principles.

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