

Extradition of criminals in the context of combating cybercrime

Ali Ghribi *

Research Center of Islamic Sciences
and Civilization in Laghouat
Ghribi.ali87@gmail.com

Mohammed Ghribi

Amar Telidji University of Laghouat
Law and Political Science Research Laboratory
ghribi.mouhamed03@gmail.com



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ABSTRACT:

The technological development that our modern era has known has a set of negative effects, perhaps the most important of which is what is known as information crime, which in turn led to the development of a new type of criminal known as the information criminal, as it differs from the traditional criminal, whether in terms of the criminal means, behavior, its categories, or the motives that lead him to commit the crime.

key words : extradition, cybercrime, international cooperation.

Introduction:

The cross-border nature of cybercrime allows criminals to distance themselves from the authority of the victimized state., often escaping punishment. Given the importance of international cooperation to combat transnational crimes, including cybercrimes, and to ensure the punishment of perpetrators of these crimes, states have concluded extradition agreements. These treaties are designed to compel a

* - Author Correspondent:

nation harboring an individual to surrender them to another nation for either prosecution or the execution of a court-mandated punishment.¹

Extradition operates on the foundation that the state within which an individual accused of a transnational crime resides, such as cybercrime, is present must prosecute him, if its legislation permits it. Otherwise, it must extradite him to another state requesting his trial or to enforce a sentence issued against him².

In other words, Extradition is the legal procedure by which a state (the requested state) surrenders an individual within its jurisdiction to another state (the requesting state), upon formal request, for the purposes of criminal prosecution or the execution of a judicial sentence."³.

Numerous international treaties and conferences have addressed the matter of extradition, advocating for the establishment of a comprehensive global treaty on the extradition of offenders, These include the First Congress of Judicial Police in Monaco in 1924 and the International Penal Congress in London in 1945.

Significant strides in the development of extradition rules are exemplified by the European Convention on Extradition and the 1962 Benelux Treaty on Extradition.

Numerous bilateral agreements have also been concluded, and in continuation of these agreements, countries have issued their own legislation to govern the extradition system, including the French law issued on March 10, 1927. Essentially, this framework represents a codification of the recognized international regulations governing the extradition of offenders⁴.

Considering the aforementioned context, the following query is presented: What is the efficacy of extradition as a tool for combating cybercrime? This study will, therefore, examine the conditions necessary for extradition and the procedures

¹ Muhammad Ahmad Mahran, Extradition in National and International Criminal Law, no publisher, 2011 edition, p. 605.

² Hosni Abd al-Samee Ibrahim, Emerging Crimes Through the Internet, Dar al-Nahda al-Arabiya, 2011 edition, p. 415.

³ Sulayman Ahmad Muhammad Fadl, Legislative and Security Responses to Crimes Arising from the Use of the Internet, no publisher, Cairo, 2007, p. 420.

⁴ Khaled Musa Al-Tuni, Criminal Liability for the Dissemination of Incorrect Data and Information, Dar Al-Nahda Al-Arabiya, first edition, 2008, p. 510.

involved in requesting it, followed by an overview of international cooperation aspects in this area.

THE FIRST TOPIC : RULES FOR EXTRADITION

" According to Article 102 of the Rome Statute of the International Criminal Court, extradition is 'the act of one State legally transferring a person to another State under the authority of a treaty, agreement, or national law.' Therefore, the importance of the conditions for extradition lies in their definition of the relationship between the states parties to the extradition process and their establishment of the general provisions on the basis of which extradition will or will not take place, provided these conditions are met at the time of initiating the extradition decision. These conditions are almost identical in all cases of extradition in terms of elements, but in terms of substance, they are subject to disagreement between states, depending on their need for extradition and the considerations of international interests that each state¹ takes into account. These are as follows:

First Requirement: Double criminality²

The principle necessitates that the conduct for which extradition is sought be deemed criminal under the legal systems of both the requesting and requested states. The crucial element is the criminal nature of the act itself, without regard to its particular legal form of punishment. The legal description or qualification of the conduct is immaterial in assessing compliance with these requirements and its punish ability.

The necessity for double criminality stems from the requesting state's objective to either prosecute the person accused of the criminal act or to enforce the penalty that has been rendered against them, This assumes that the conduct is criminal under its legislation, If it is not criminal, it is inconceivable that there would be a public prosecution or criminal prosecution against the accused person, nor is it conceivable that a criminal judgment would be issued against him. On the other

¹ Hussein bin Saeed Al-Ghafri, Criminal Policy in Confronting Internet Crimes, Dar Al-Nahda Al-Arabiya, 2009 edition, p. 643.

² Article 697, Paragraph 4 of Law No. 07/17 amending and supplementing the Algerian Code of Criminal Procedure No. 66-155, No. 20 of 2017.

hand, it is not permissible to demand that the requested state impose a penalty for committing conduct that is not fundamentally criminal under its law¹.

- Numerous agreements and treaties have stipulated and emphasized this condition. For example, United Nations Model Treaty on Extradition, Article 2, and European Convention on Cybercrime, Article 40².

Second Requirement: Conditions related to persons sought for extradition

* Non-extradition of nationals: One of the prevailing and established principles in the international community, enshrined in most national legislation and agreements, is the doctrine of non-extradition of nationals, without regard to the category of crime they may have perpetrated in any territory external to their state.

According to Article 698/01 of the Algerian Code of Criminal Procedure, it is absolutely prohibited to extradite Algerian citizens to any foreign country.

* Exemption from extradition for those who have been subjected to legal proceedings for the same criminal act for which their surrender is sought³:

– In instances where an individual sought for extradition has previously undergone trial for the offense prompting the extradition request and has been either acquitted or subjected to punishment, their extradition is not permitted. Not only that, but extradition is also not permitted if the investigation and trial are for the commission of the same act for which they are sought. - If we refer to the Algerian Code of Criminal Procedure, we will see the Algerian legislator's interest in this condition in the text of Article 701, This provision stipulates: 'Extradition of a foreign national shall be denied if they are currently facing prosecution in Algeria or have been convicted therein and are sought for extradition concerning a separate offense. The execution of the extradition request shall be postponed until the conclusion of the ongoing Algerian legal proceedings or, in the case of a conviction, until the completion of the imposed sentence. Nevertheless, this provision does not preclude the temporary transfer of the foreign national to the requesting state's judicial authorities for court appearance, provided there is a clear

¹ Hosni Abdel Samiee Ibrahim, New Crimes Committed via the Internet, Dar Al-Nahda Al-Arabiya, 2011 edition, p. 610.

² Mohamed Ahmed Mahran, Extradition in National and International Criminal Law, no publisher, 2011 edition, pp. 40-41.

³ Osama Habib Eid, Electronic Criminal Surveillance, first edition, Dar Al-Nahda Al-Arabiya, Egypt, 2009, p. 200.

and unambiguous agreement for their return upon the resolution of the case by the requesting state's court. The present article's provisions are applicable in instances where the foreign national is undergoing physical coercion in accordance with Algerian legal statutes.” There are also numerous agreements and treaties that stipulate and emphasize this condition, such as the United Nations Model Treaty on Extradition in Article 3, and the League of Arab States Convention on Extradition in Article 5.

Third Requirement: Stipulations relevant to the crime subject to extradition proceedings

* Extraditable offenses: The determination of the character of crimes subject to extradition proceedings is critically significant, as it determines whether extradition is permissible or not. The fundamental nature of said crimes provides the foundational framework upon which extradition requirements are predicated¹. Countries follow three approaches in determining crimes for which extradition is permissible:

* The Exhaustive Approach (the "List Approach"): This approach relies on listing a group of crimes exclusively (murder, fraud, theft, money laundering, terrorism, etc.) on a list included in the law or attached to the agreement, so that these crimes, and no other crimes, are the ones for which extradition is requested. This approach is considered one of the least common among countries, leading some criminals to escape punishment if the crime is not included on the list.

* The degree of criminal culpability or the minimum penal sanction approach: This is the most common method for determining crimes for which extradition is permissible. It requires a state to specify, in its domestic legislation or in bilateral or multilateral treaties, the minimum penalty prescribed for the crimes for which extradition is possible. Algeria is one of the countries that has adopted the gravity method².

* The "mixed system"³ method: This is also a common method for determining crimes for which extradition is permissible. It achieves two benefits: on the one

¹ Hosni Abdel Samiee Ibrahim, op. cit., p. 620. Article 697, paragraphs 4 and 5 of the Algerian Code of Criminal Procedure.

² Mohamed Ahmed Mahran, op. cit., pp. 62-63.

³ Othman Kharshi, Extradition as a Mechanism to Combat Cybercrime, Journal of Legal and Political Research, Issue 10, University of Saida, Algeria, 2018, p. 933.

hand, it guarantees a certain degree of gravity for the crime punishable in both countries, according to which extradition is permitted. On the other hand, it ensures that specific crimes that pose a threat to the contracting states are not subject to extradition without regard to their degree of gravity or the penalty prescribed for them.

THE SECOND TOPIC: EXTRADITION PROCEDURES

The procedure for extradition is founded upon the principle of mutual state interest. The state within whose borders a cybercrime suspect is located is required to initiate prosecution, provided its legal framework allows. Failing this, it is mandated to extradite the suspect for adjudication by another appropriate state. Consequently, the extradition process safeguards the requesting state's interest in ensuring the punishment of those who violate its laws, It also serves the interests of the requested State by helping it cleanse its territory of an outlaw whose continued presence would threaten its security and stability¹.

The stages and procedures of extradition refer to "those procedural rules adopted by States Parties in the extradition process, in accordance with their national laws and commitments to facilitate the completion of the extradition procedure, thereby fostering international collaboration in the fight against crime and ensuring that no criminal is able to escape justice²."

Extradition procedures are shared by both the requesting and requested states. They are not absolute, but are restricted by certain international or treaty obligations, The requesting state's procedures are based on the extradition request, constituting the official means by which the state conveys its aspiration to acquire the person in question. This requisition must be documented in writing and is not permissible in oral form, including transmissions via telegram, telegraph, or any other electronic means of communication, except in certain urgent cases and as an exception:

The first steps involve accepting the extradition request, starting investigations, collecting evidence, and detaining the person wanted for extradition.

¹ Osama Habib Eid, op. cit., p. 220.

² Haitham Abdel Rahman Al-Baqli, *Electronic Crimes*, Dar Al-Ulum, 2010 edition, pp. 730-731.

Second steps include the examination of the apprehended person and the subsequent decision to either detain them pending trial or grant them provisional release upon posting bail.

Third and final steps involve examining the request by the competent court, which decides whether to accept or reject it¹.

In Algeria, In accordance with the stipulations of Chapter Two, Part One, Book Seven of the Algerian Code of Criminal Procedure, the requesting government initiates an extradition request through diplomatic channels, specifically via the Ministry of Foreign Affairs². Following a political assessment, the Ministry of Justice³ transmits the request to the Ministry of Justice for legal evaluation and decision. The extradition request is required to contain a comprehensive statement of the alleged criminal acts, specifying the time, location, legal classification, and pertinent legal provisions. When extradition is sought for sentence enforcement, a certified copy of the final judicial conviction must be attached.

Article 704⁴ : What can be said about this text is:

- Immediate Procedure: The article outlines immediate actions to be taken upon the arrest of a foreign national, emphasizing prompt legal procedures and transparency.
- Rights of the Accused: It safeguards the accused's rights to be informed of the reason for their detention and to have their identity verified, reflecting legal respect for human rights.
- Specific Time Frame: The 24-hour time limit imposes a strict timeframe on authorities, underscoring the importance of timeliness in legal proceedings.
- Formal Documentation: The requirement for a detailed report ensures procedural documentation, providing an official record for reference, highlighting the importance of legal record-keeping.

Article 705⁵ :What can be said about this text is:

¹ Article 702 of the Criminal Procedure Code.

² Article 703 of the Criminal Procedure Code

³ Haitham Abdel Rahman Al-Baqli, op. cit., pp. 749-750.

⁴ Article 704: "Upon arrest, the Public Prosecutor must, within 24 hours, interrogate the foreign national to confirm their identity and inform them of the legal basis for their detention. A detailed report of these procedures will be prepared."

⁵ Article 705 : "The foreign national shall be transferred as quickly as possible to the capital's main prison, where they will be held in custody."

- Prompt Transfer: The article mandates the swift transfer of the foreign national, emphasizing efficiency in the initial stages of detention.
- Centralized Detention: It specifies the capital's main prison as the location, indicating a centralized authority and potentially higher security measures.
- Custodial Placement: The phrase "held in custody" confirms the individual's formal detention, highlighting the legal status change upon transfer.
- Procedural Efficiency: The article focuses on the logistical aspect of detention, prioritizing the rapid movement of the individual to a designated facility

Article 706¹: What can be said about this text is:

- Simultaneous Document Transfer: The article emphasizes the immediate and simultaneous transmission of extradition documents, ensuring efficiency and preventing delay.
- Supreme Court Involvement: It assigns the Public Prosecutor at the Supreme Court a key role, indicating the gravity of the extradition process and the need for high-level judicial oversight.
- Rapid Interrogation: The 24-hour time limit for interrogation highlights the urgency of the matter and the need for swift judicial action.
- Formal Reporting: The requirement for a report ensures that the interrogation process is documented, providing a record for further legal proceedings and accountability

Article 707²: What can be said about this text is

- Expedited Supreme Court Review: The immediate submission of reports and documents to the Criminal Chamber of the Supreme Court underscores the urgency and high-level judicial scrutiny of extradition cases.
- Defined Timelines and Rights: The 8-day appearance deadline and potential extension ensure both timely proceedings and safeguard the foreign national's right to adequate preparation.

¹ Article 706: "The documents supporting the extradition request shall be sent simultaneously to the Public Prosecutor at the Supreme Court, who will then interrogate the foreign national and prepare a report within 24 hours."

² Article 707: "The reports and other documents shall be sent immediately to the Criminal Chamber of the Supreme Court. The foreign national shall appear before the court within a maximum of 8 days from the date of notification of the documents. An 8-day extension may be granted before the hearing at the request of the Public Prosecution or the foreign national. The foreign national shall be interrogated, and minutes shall be taken. The hearing shall be public unless otherwise decided at the request of the Public Prosecution or those present. The statements of the Public Prosecution and the parties concerned shall be heard, and the latter may be assisted by a lawyer approved by the Public Prosecution and an interpreter. The foreign national may be temporarily released at any time during the proceedings."

- Transparency and Due Process: Provisions for a public hearing (unless otherwise decided), interrogation, and legal representation guarantee transparency and adherence to due process.

- Procedural Flexibility: The allowance for temporary release during proceedings provides judicial flexibility, balancing the need for detention with individual rights.

Article 708¹: What can be said about this text is

- Voluntary Extradition: This article addresses the scenario where the foreign national consents to extradition, streamlining the process by bypassing further legal challenges.

- Formal Waiver: The requirement for a formal declaration ensures that the individual's consent is explicit and legally binding, protecting against later claims of coercion.

- Judicial Recording: The court's obligation to record the declaration provides an official, irrefutable record of the individual's decision.

- Ministerial Action: The immediate transmission of the declaration to the Minister of Justice triggers the administrative phase of extradition, emphasizing the efficiency of the process in cases of consent

Article 709²: What can be said about this text is

- Judicial Review and Reasoning: The Supreme Court's mandate to issue a "reasoned opinion" underscores the importance of judicial review and the need for a clear justification for any extradition decision.

- Grounds for Extradition Approval: The article specifies that procedural errors or non-compliance with legal requirements are grounds for approving the extradition request, highlighting the court's focus on legal integrity.

- Ministerial Referral: The requirement to return the file to the Minister of Justice within 8 days of Article 707's deadline ensures a timely transition from judicial review to executive action.

- Time Sensitive Action: the time frame of 8 days, shows the importance of moving this process forward, and not to let it stagnate.

¹ Article 708: "If the foreign national declares upon their appearance that they waive the right to invoke the preceding provisions and formally agree to be extradited to the authorities of the requesting state, the court shall record this declaration. The Public Prosecutor shall send a copy of the declaration immediately to the Minister of Justice for necessary action."

² Article 709: "In the opposite case, the Supreme Court shall issue its reasoned opinion on the extradition request. The opinion shall be in favor of the request if the court finds a procedural error or non-compliance with legal requirements. The file shall be returned to the Minister of Justice within 8 days of the expiration of the deadline specified in Article 707."

Article 710¹: What can be said about this text is

- Finality of Rejection: This article establishes that a Supreme Court decision rejecting an extradition request is final, ensuring legal certainty and preventing repeated requests.
- Judicial Authority: It vests the Supreme Court with the ultimate authority to deny extradition, emphasizing the judiciary's role in safeguarding individual rights.
- Protection Against Extradition: This provision acts as a safeguard, preventing the executive branch from overriding a judicial rejection of extradition.
- Legal Clarity: This article provides a clear and decisive end to the extradition process when the Supreme Court rejects the request, eliminating ambiguity.

Article 711²: What can be said about this text is

- Executive Authorization: This article outlines the executive phase of extradition, where the Minister of Justice authorizes the transfer through a decree.
- Time-Bound Execution: The one-month deadline for the requesting state to take custody emphasizes the need for timely execution and prevents indefinite detention.
- Release Provision: The provision for release after one month serves as a safeguard against prolonged detention due to the requesting state's inaction.
- Preventing Repeated Claims: The clause prohibiting further claims for the same reason ensures finality and prevents the requesting state from repeatedly pursuing the same extradition.

Article 712³: What can be said about this text is

- Urgent Provisional Arrest: This article allows for immediate, provisional arrest in urgent extradition cases, prioritizing swift action to prevent the escape of potentially dangerous individuals.

¹ Article 710: "If the Supreme Court issues a reasoned opinion rejecting the extradition request, the opinion shall be final, and extradition shall not be permitted."

² Article 711: "In the event of approval, the Minister of Justice shall submit an extradition decree for signature, if necessary. If one month has passed since the notification of the decree to the requesting state's government without their representatives taking custody of the person to be extradited, the person shall be released, and no further claim may be made for the same reason."

³ Article 712: "In urgent cases, the Public Prosecutor at the Judicial Council may, upon a direct request from the judicial authorities of the requesting state, order the provisional arrest of a foreign national if a simple notification is sent to them, either by mail or by a faster means with material written effect, indicating the existence of one of the documents specified in Article 702. A legal notice of the request must be sent to the Ministry of Foreign Affairs at the same time via diplomatic channels, mail, telegram, or any means with written effect. The Public Prosecutor shall inform the Minister of Justice and the Public Prosecutor at the Supreme Court of the arrest."

- Simplified Notification: The acceptance of "simple notification" via various means (mail, etc.) streamlines the process in urgent situations, allowing for quick response based on preliminary information.
- Dual Notification: The simultaneous notification of the Ministry of Foreign Affairs ensures diplomatic awareness and adherence to proper channels, while notification of the Minister of Justice and the Public Prosecutor at the Supreme Court ensures high level legal oversight.
- Judicial Council Authority: It grants the Public Prosecutor at the Judicial Council significant authority in urgent cases, enabling them to act decisively based on direct requests from foreign judicial authorities

Article 713: (Amended) A person provisionally arrested may be released in accordance with the conditions stipulated in Article 705 if the Algerian government does not receive the documents referred to in Article 702 within forty-five days of the date of arrest. Release shall be ordered based on a petition submitted to the Supreme Court, which shall rule within eight days in a decision that is not subject to appeal. If the aforementioned documents subsequently reach the Algerian government, Subsequently, legal processes are to be conducted in accordance with the regulations outlined in Article 703 and those that follow. Upon scrutiny of the aforementioned articles of the Algerian Code of Criminal Procedure, it is apparent that the Algerian legislator has striven to incorporate measures that preclude a criminal's avoidance of punishment, whether on its territory or the territory of another country. On the other hand, these texts and legal rules are general and can therefore be applied to combating cybercrime, which, as previously mentioned, is considered a cross-border crime. Therefore, the Algerian legislator must intensify efforts to conclude more agreements on the issue of extradition, especially in light of technological developments that have become a threat to the security and stability of countries more than a physical military threat.

THE THIRD TOPIC: ASPECTS OF INTERNATIONAL COOPERATION IN THE FIELD OF EXTRADITION

Previously, for a long time, there were no international provisions or treaties regarding the extradition of criminals or the procedures to be followed in handing over a fugitive from justice to the requesting state for trial or execution of a sentence; However, after World War II, there was an increase in the number of agreements and treaties, especially bilateral ones, to regulate extradition

procedures, Numerous multilateral agreements emerged, which includes the 1981 Inter-American Convention on Extradition, the 1952 Arab States Convention on Extradition, the 1957 European Convention on Extradition, the 1961 agreements of the Organization of African Unity and Madagascar, and the 1983 Riyadh Arab Convention on Judicial Cooperation, and the Gulf Security Agreement of 1994, In addition to the above, there is another form of international cooperation in the field of extradition, represented by mutual recognition of arrest, detention, or detention orders. Pursuant to this, the competent authority in one state issues an arrest, detention, or detention order, which is recognized as valid by one or more other states and must be executed¹.

Since its independence, Algeria has concluded several bilateral agreements in the field of judicial cooperation and extradition with:

Morocco on March 15, 1963; Tunisia on November 14, 1963; the Arab Republic of Egypt on July 29, 1965; France on October 14, 1966; Mauritania on January 15, 1970; Belgium on October 8, 1970; the German Democratic Republic on November 21, 1990; and Cuba on August 30, 1973.

Therefore, international treaties and agreements are the primary and authentic source of extradition, especially in the field of combating cybercrime. Extradition is an international judicial cooperation procedure between two states or between a state and an international judicial body, A treaty represents an explicit expression of a state's willingness to abide by its provisions, Therefore, the refusal of any state not party to a treaty to extradite does not entail any liability², The requesting state may seek other means to extradite the criminal, such as international courtesies and reciprocity.

We believe that these agreements can be applied to the field of cybercrime. Algeria can request the extradition of a criminal from any country with which it has signed an agreement, in order to prosecute or execute a penalty against them for a crime committed online.

¹ Amal Lutfi Hassan Jaballah, The Scope of the Administration's Discretionary Power in the Field of Extradition: A Comparative Study, First Edition, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, p. 18.

² Muhammad bin Ahmad Sanjur Al-Balushi, op. cit., pp. 645-646.

CONCLUSION :

The lack of a common understanding of what constitutes a cybercrime, and the absence of a unified legal definition, is perhaps due to the lack of international coordination in the field of cybercrime. This is due to the absence of bilateral or collective international treaties to combat cybercrime, or to the varying definition of the crime depending on the legal systems.

As we noted previously, the international nature of cybercrime has raised an important question regarding determining which country has jurisdiction over this crime, particularly in the area of extradition. Despite its importance in combating various cybercrimes, it faces many obstacles, including the differences in domestic legislation in this area, which differ from one country to another.

The tremendous developments in modern information and communication technologies, while facilitating our daily lives, have also opened the door wide to the development of tools, means, and methods for committing cybercrimes. This has made cybercrimes more complex, making combating them seemingly impossible without the concerted efforts of all stakeholders in the information arena. Given this situation, it is imperative for governments to quickly take the necessary measures to develop mechanisms to combat such crimes and enhance international cooperation in this area.

Recommendations:

- Strengthen international cooperation in combating piracy and cybercrime by formulating policies aimed at imposing harsher penalties on perpetrators of this type of crime.
- Continuously update and develop technologies to combat these crimes in the shortest possible time.
- Conduct structured awareness initiatives for users of electronic platforms (computers, internet, smartphones, etc.), providing detailed information regarding the magnitude of threats posed by the omission of necessary precautionary steps in their utilization.
- To make Arab countries work together better to stop cybercrime, all Arab League members need to sign the Arab Convention on Combating Cybercrime.

This will help protect Arab countries from cyber threats, keep their information safe, and ensure their people's safety.

- Taking measures to preserve the confidentiality of information related to bank accounts, credit cards, and other means of information exchange.

- Continuously updating computer virus protection programs.

- Continuous training and education for human resources working in the field of combating cybercrime, creating specialized postgraduate degrees in the technical and legal fields related to combating cybercrime, and urging universities and research centers to shed greater light on such crimes by intensifying seminars, forums, and study days on this topic.

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