

INTERNATIONAL LEGAL COOPERATION AND THE PRINCIPLE OF RECIPROCITY: LESSONS FROM EXTRADITION LAW¹

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ABSTRACT

In this work, after making a brief reference to the principle of reciprocity in general, we will refer to its application in the field of international criminal legal cooperation, specifically, its application in the extradition process. However, given that within the European Union this extradition procedure has been replaced by the European arrest warrant ("EAW"), we will end our analysis with a brief reflection on the incidence of this principle in a judicial area such as the European that is governed by the principle of mutual judicial recognition.

Keywords: International Legal Cooperation; reciprocity, extradition law, European arrest warrant.

This research work is based on the analysis of the Principle of Reciprocity, which, as one of the fundamental principles of private international law, arises in the XVII to solve the limits that derive from the application of the principle of territoriality in international traffic (*Comitas Gentium*).³

Starting from the general concept of the Principle of Reciprocity that, in general terms, assumes that States assume rights and obligations based on reciprocal treatment, we will see how it is not specifically a formal recognition, but that we are faced with a principle that goes to require states to recognize the rights of other states.

Given the origin of this principle in the Doctrine *Comitas Gentium*, we will try to analyze the meaning of it based on a territorial conception by virtue of the quality of the States,

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³ Since the objective of this research work is not to carry out a thorough and thorough study of the principle of reciprocity, but a brief reference to the application, in general, of this principle and its implication in the extradition process, we refer to a study on this subject to the work of Francisco Pan Montojo, *Estudio de la reciprocidad en la doctrina, legislación y jurisprudencia*, 9 (1-2) REDI, 147-172 (1956).

in the application of the principle of reciprocity, they may enforce their rights in the territory of another upon a reciprocal behavior.

As we see from the technical-legal point of view and, specifically for Private International Law, reciprocity implies that the application of a country's domestic law to a non-national individual or legal entity of that State is subject to the treatment given in that State the nationals of this country. In other words, territorial law applies to resident foreigners as regards the State to which it foresees identical treatment for nationals of that State.

This reciprocal treatment may or may not have its conventional origin, although more and more are added to incorporate it in certain types of international Treaties, such as, for example, those referring to extradition; those whose purpose is the recognition of tax benefits to nationals of their State in the territory of another State Party; those who recognize rights to nationals of another State Party as well as those who recognize their own nationals when said foreigners are in their territory; or, for example, those that recognize judicial decisions taken by jurisdictional bodies of another State.

Even when it is affirmed that international reciprocity has had greater relevance when there were no conventional norms that established a uniform and general regime on the obligations of the States, throughout this work we will be able to verify that in the matter of international cooperation, the principle of reciprocity acquires greater importance since when there is an international agreement or treaty, the criterion that is being applied continues to be that of reciprocity.⁴ Thus, in diplomatic law, for example, regardless of the conventional regime adopted through the United Nations conventions on the subject, some issues are regulated according to what is established by international reciprocity. This is what happens, for example, with the freedom of movement granted to diplomatic agents within the host country.

In any case, the application of this principle should never involve a decompensation of efforts between the States involved, so that one of the States obtains a benefit clearly to the detriment of the other. Reciprocal treatment should also involve fair reciprocal treatment. In fact, as PLANTEY shows “*respect for reciprocity gives rise to good faith and credit among States*”.⁵

⁴ Specifically in international relations with the Holy See, Roca affirms that in relations between States there are hardly any differences, as far as the application of the principle of reciprocity is concerned, between the cases in which there is agreement between the States and those in those that there is no such agreement. *Cfr.* 65 MARÍA J. ROCA, *El Principio De Reciprocidad Y Las Relaciones Internacionales De La Santa Sede* 65, REDC 127, 136 (2008).

⁵ ALAIN PLANTEY, *TRATADO DE DERECHO DIPLOMÁTICO. TEORÍA Y PRÁCTICA* 768 (Juan Andres Iglesias Sanz trans. 1992).

Given that, as Pan Montojo states “the system of private international law is based on a reciprocity basis”, after analyzing what could be called a global reciprocity, that is, of the reciprocity of the States as the foundation of international law, our scientific work focuses on the interpretation that this principle should be carried out in the specific field of extradition, which, as we all know, involves a usual procedure of international legal assistance between two States in the mutual respect of their sovereignty in compliance with the rules of International right. However, we cannot forget that the States will regulate in their own Constitution and laws what the material requirements and the procedure for carrying out such international judicial assistance are.

Specifically in the Spanish legal system, Article 13.3 Spanish Constitution, states that “*Extradition shall only be granted in compliance with a treaty or the law, in accordance with the principle of reciprocity*”. And it is article 1 of Law 4/1985, of March 21, on passive extradition that incorporates this principle when it determines that “*The Government may demand a guarantee of reciprocity from the requesting State*”.

We will then finish this research work analyzing reciprocity as a general principle of extradition emphasizing the subjects since it tends to think that reciprocity is between jurisdictional bodies instead of realizing that it is between States, as well as emphasizing the content of this principle as well as in the procedure application in itself.

Finally, remember that the principle of reciprocity is particularly widespread as a principle in the states of tradition of continental law, where it acquires the status of a binding pact. However, reciprocity is not considered a mandatory principle in common law countries.

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