Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 302
17 September 1954

European Convention on Extradition

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Sir Geoffrey de FREITAS, United Kingdom, Socialist Group

1. 1954 - 6th Session - Second part

A. Draft Recommendation

The Assembly,

Having regard to the motion tabled in the Assembly by Mr. J.G. Poster, Q.C., for the conclusion of a European Convention on Extradition in accordance with the desire of all Members for common action in the legal field, which was referred to the Committee on Legal and Administrative Questions on 30th November, 1951 [see Document 82 (1951)] ;

Considering that it is desirable, in view of the close relations which are developing between the Members of the Council of Europe, to conclude a European Convention on Extradition in order to secure the punishment of those committing crimes within the jurisdiction of a Member of the Council of Europe and taking refuge on the territory of another Member State, and to simplify, so far as possible, extradition procedure ;

Having been informed that a Committee of Governmental Experts met in Strasbourg in October, 1953, " t o study the possibility of laying down certain principles governing extradition which would be acceptable to all Members of the Council, the question as to whether these principles should figure in a multilateral convention or whether they should serve merely as a basis for a bilateral convention on extradition remaining for the time being in abeyance";

Having approved, in principle, the articles for inclusion in a European Convention on Extradition contained in the report of the Committee on Legal and Administrative Questions which is hereby transmitted to the Committee of Ministers (Document 234),

Recommends to the Committee of Ministers,

1. that it should instruct the Committee of Governmental Experts on Extradition to continue its work with a view to the conclusion of a European Convention on Extradition and to the inclusion therein of the articles drafted by the Committee on Legal and Administrative Questions and approved by the Assembly, which are appended to this Recommendation ;

2. that, in view of the Resolution adopted by the Committee of Ministers during their Ninth Session in August, 1951, for the signature of partial agreements, this work should continue, even if it were to appear subsequently that certain Member States find themselves unable to become parties to such a convention ;

3. that, should the Committee of Experts find it necessary to make important changes of substance in these articles, such proposed changes should be discussed at joint meetings to be convened between the appropriate subcommittee of the Assembly's Committee on Legal and Administrative Questions, on the one hand, and the Committee of Governmental Experts or a sub-committee thereof, on the other hand, for the purpose of reaching a solution acceptable to both sides ;

4. that the text of the proposed European convention should be communicated to the Assembly for an Opinion before being finally approved by the Committee of Ministers.

B. Explanatory Memorandum

1.

1. On 24th May, 1954, the Assembly decided to interrupt the debate on the Report of the Committee on Legal and Administrative Questions regarding the conclusion of a European Convention on Extradition (Doc. 234) and to resume this debate during the second part of the Sixth Ordinary Session. This was done in order to meet the wishes of certain Representatives who had expressed the view that they had insufficient time to study the Report.

2. The Committee on Legal and Administrative Questions has taken advantage of this interval to continue its work, as a result of which it decided at a meeting on 16th September, 1954, to substitute the following texts for Article 2, Article 3 (French text.only), Article 10 and Article 18.

1.1. New text of Article 2

Political Offences

3. A requested High Contracting Party may decide that extradition shall or may be refused for an act which, according to the circumstances in which it has been committed, is political or connected with a political act and committed with a view to preparing for, to ensuring the commission of, to concealing or to preventing such a political act; or when there is reason to believe from the circumstances that the extradition is requested with a view to taking action against someone for an act of a political character.

4. The following shall not be deemed political offences.:

a. Offences in respect of which the High Contracting Parties are obliged by international conventions to institute proceedings ;

b. attempts on the life of a Head of State or Head of Government.

5. Statement of reasons :

6. In the report submitted to the Assembly on 24th May, 1954, the first sentence of paragraph 1 of this Article was worded as follows : " A requested High Contracting Party may decline to extradite for an act..." After further-examination, it was felt that this provision, while raising no difficulties in countries where extradition is, in the full sense,, an act of Government, would have raised objections in countries where extradition is either partly or wholly an act of the judiciary. The new text is thought to meet these objections.

7. I t was also pointed out, in the Committee, that the law and tradition of several member countries prohibits extradition for political acts.

1.2. New text of Article 3 (French text only)

Infractions fiscales

L'extradition est accordée pour infraction aux lois et règlements douaniers, fiscaux,: financiers, économiques et monétaires, si la peine prévue par la loi de la Haute Partie Contractante requérante n'est pas inférieure à un an d'emprisonnement ou à une amende de caractère pénal équivalente à Irait mille francs suisses-or (au taux de 290 milligrammes 3 225 fixé par la décision du Conseil Fédéral en date du 26 septembre 1936).

Statement of reasons :

I n the French version of the former text, it has been thought desirable to clarify the meaning of the word amende as used in this Article hy adding the qualifying words : « de caractère pénal ». I t is now clear that fiscal penalties such as double or treble duties are not included within the meaning of that term.

1.3. New text of Article 10

Pending Prosecution for the same acts

8. A requested High Contracting Party may decline to extradite a person claimed if he is being prosecuted for the act or acts for which extradition is sought, or if he has been apprehended with a view to such prosecution, either at the time of receipt of an application for provisional arrest, or (in the absence of such application) at the time of receipt of a request.

9. A décision de non-lieu in the requested High Contracting Party shall allow the requested High Contracting P a r t y to refuse extradition. Statement of reasons : In order to avoid ambiguity, the word « définitive » has been omitted in the new paragraph 2 of this Article. The reason for this is that in Continental law systems, a décision de non-lieu does not become absolutely final when the time-limit prescribed for remedies at law has elapsed or when such remedies have been rejected. Secondly, after further examination, it appeared to the Committee that the « décision de non-lieu» referred to in this paragraph was one having taken place in the requested and not in the requesting High Contracting Party. If such a decision has been taken in the requesting High Contracting Party, it is clear that that High Contracting Party will only request the extradition of a person when new evidence has come to light which makes it possible for proceedings to be resumed against the person concerned. In such a case, the requested High Contracting Party should grant extradition.

1.4. New text of Article 18

Delivery and return of property requested

10. The authorities of the High Contracting Parties shall provide each other, on request, with property :

a. which may be required as evidence;

b. which a person claimed or his accomplice may have acquired as a result of the offence outside the territory of the requested High Contracting Party or which he may have acquired in exchange for that property outside the said territory ; and this shall remain the case even when the said property would be liable to seizure or confiscation in the territory of the requested High Contracting Party

11. The rights which third parties may have acquired in the property in question shall be preserved. Where such rights exist, the property shall be returned to the High Contracting Party which delivered it, as soon as possible and without charge, at the end of the trial.

12. When requested property is needed for preliminary criminal investigation, the requested High Contracting Party may temporarily retain it or may deliver it on condition that it be returned for such investigation. Statement of reasons: Paragraph 2 of the former text has been deleted as it was thought that property requested in connection with an offence should only be returned where there are third-party rights to it. For the same reason, the second sentence has been re-drafted. A similar sentence appears in Article 13 of the 1951 Convention between France and the German Federal Republic. Furthermore, the last sentence of the third paragraph of the preamble of the draft Recommendation has been amended, as the Committee of Ministers has indicated in paragraph 60 of the Supplementary Report to the Fifth Report addressed by the Committee of Ministers to the Assembly (Document 272, dated 13th September, 1954) that it intends, together with Experts, to continue its work on the question of extradition. The draft recommendation and appendix thereto as amended in the light of the above considerations is reproduced here for the convenience of the Assembly.

Appendix APPENDIX

Articles for inclusion in a European Convention on Extradition

ARTICLE 1

Extraditable Acts

The following persons shall be liable to extradition :

a. Persons claimed by a High Contracting Party for an act which is an offence in both the requested and requesting High Contracting Parties and is punishable in the requesting' High Contracting Party by at least one year's imprisonment; and

b. Persons who have already been convicted of such an offence and have already been sentenced to at least three months' imprisonment in the requesting High Contracting Party.

ARTICLE 2

Political Offences

1. A requested High Contracting Party may decide that extradition shall or may bo refused for an act which, according to the circumstances in which it lias been committed, is political or connected with a political act and committed with a view to preparing for, to ensuring the commission of, to concealing or to preventing such a political act; or when there is reason to believe from the circumstances that the extradition is requested with a view to taking action against someone for an act of a political character.

2. The following shall not be deemed political offences :

a. Offences in respect of which the High Contracting Parties arc obliged by international conventions to institute proceedings ;

b. Attempts on the life of a Head of State or Head of Government.

ARTICLE 3

Fiscal Offences

Extradition shall be granted for customs offences and offences against laws and regulations of a fiscal, financial, economic and monetary character if the penalty provided by the law in the requesting High Contracting Party is not less than a year's imprisonment or a fine of not loss than the equivalent of eight thousand gold Swiss Francs (at the rate of 290.3225 milligrammes as fixed by the decision of 26th September, 193G, of the Federal Council).

ARTICLE 4

Military Offences

Extradition for military offences is excluded from the field of application of the present convention.

ARTICLE 5

Extradition of Nationals

Where the person claimed is a national of a requested High Contracting Party, and for that reason cannot be extradited, the requested High Contracting Party shall, within one year of the notification to the requesting High Contracting Party of its refusal to extradite, prosecute the person concerned as if the act had been committed on its own territory.

ARTICLE 6

Place of Commission of extraditable acts

Extradition may be refused if the act for which it is requested was committed in whole or in part in the territory of the requested High Contracting Party.

ARTICLE 7

Lapse of Time

Extradition may be refused when the person claimed has become immune, by reason of lapse of time, from prosecution or punishment according to the laws of either the requesting or the requested High Contracting Party.

ARTICLE 8

Capital Punishment

If the act for which extradition has been requested is punishable by death in the requesting High Contracting Party and there is no death-penalty in the law of the requested High Contracting Party, the requested High Contracting Party may extradite only if the requesting High Contracting Party undertakes to recommend to the Head of State or to its constitutionally competent authority to grant a reprieve or an order setting aside the death penalty.

ARTICLE 9

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3. A requested High Contracting Party may decline to extradite a person claimed if such person has already been prosecuted by the requesting High Contracting Party for the act or acts for which his extradition is requested and if he has been either finally acquitted or convicted, unless, in the latter case, the extradition is sought so that the person claimed may serve an unexpired term of the sentence imposed as the result of such conviction.

4. A requested High Contracting Party may decline to extradite a person claimed if such person has been prosecuted by the requested High Contracting Party or by a third State for the same act or acts for which extradition is sought and has been finally acquitted or convicted.

ARTICLE 10

Pending Prosecution for the same acts

5. A requested High Contracting Party may decline to extradite a person claimed if he is being prosecuted for the act or acts for which extradition is sought, of if he has been apprehended with a view to such prosecution, either at the time of receipt of an application for provisional arrest, or (in the absence of such application) at the time of receipt of a request.

6. A decision de non-lieu in the requested High Contracting Party shall allow the requested High Contracting Party to refuse extradition.

ARTICLE 11

Postponed or Conditional Extradition

7. A requested High Contracting Party may postpone the extradition of a person claimed :

a. in order that the person claimed may be prosecuted and punished by the requested High Contracting Party, or, where he has already been convicted, in order that he may serve his sentence in the requested High Contracting Party for an act other than that for which extradition is requested ; or

b. in order that the person claimed may testify as a witness in a criminal proceeding pending in the requested Higli Contracting Party, but, in this case, extradition shall only be postponed for a maximum of six months from the date of receipt of the request.

8. As an alternative to such a postponement of extradition the requested High Contracting Party may extradite the person claimed upon condition that such person be returned to the requested High Contracting Party as soon as the prosecution in the requesting High Contracting Party is concluded.

ARTICLE 12

Utile of Speciality

A High Contracting Party to which a person lias been extradited shall not, without the consent of the High Contracting Party which extradited such person :

a. prosecute or punish such person for an act committed before his extradition other than that for which he wns extradited ;

b. surrender such person to another High Contracting Party or to a non-High Contracting Party for prosecution or punishment;

c. prosecute such person before a court specially constituted for the trial or to which special powers are granted for the trial.

ARTICLE 13

Conflicting Requisitions

If the extradition of the same person is requested concurrently by several High Contracting Parties, either for the same act or for different acts, the requested High Contracting Party shall, in deciding to which High Contracting Party the person claimed shall be extradited, consider all the circumstances, and especially the possibility of later extradition from one requesting High Contracting Party to another, the respective dates of the requests, the relative seriousness and the place of commisssion of the act or acts and the nationality of the person claimed,

ARTICLE 1 4

The Request and supporting documents

9. The request shall be in writing and shall be communicated by a diplomatic or consular officer of the requesting High Contracting Party to the competent authority of the requested High Contracting Party.

10. The request shall contain :

a. a description for the purpose of identification of the person claimed ;

b. a statement that a warrant of arrest, or other document of equivalent import in the prosecution of the person claimed, has been issued.

11. The request shall be supported by :

a. a copy of the warrant of arrest or other document of equivalent import in the prosecution of the person claimed, or a copy of the judgment of conviction against the person claimed, and of any sentence imposed in execution of such judgment ;

b. a statement of the law of the requesting High Contracting Party under which it is intended to prosecute or to punish the person claimed, which shall show, in cases where it is intended to prosecute, that such law was in force when the act was committed for which extradition is requested.

12. Thé documents mentioned in (a) and (b) of paragraph 3 of this Article should be drawn up in accordance with the law of the requesting High Contracting Party.

ARTICLE 1 5

Supplementary Information

If the information communicated by the requesting High Contracting Party is insufficient to enable the person to be identified or to establish the circumstances of the offence with which he is charged or the wording of the penal provisions applicable to the case, such supplementary information as is required shall be forwarded by the requesting High Contracting Party immediately on request.

ARTICLE 1 6

Application for provisional arrest

13. In cases where there is reason to suspect that the person claimed may attempt to escape or make the establishment of the facts more difficult, a High Contracting Party shall have the right to apply for-his provisional arrest, even before forwarding a request for extradition.

14. Such application for provisional arrest:

a. may be made through diplomatic or consular channels, as appropriate ; or

b. may he forwarded by the competent authority of the requesting High Contracting Party direct to the competent authority of the requested High Contracting Party (a list of competent authorities will be appended to this Convention) ; or

c. may appear in the official notices of the International Criminal Police Commission which shall constitute an official notification.

15. Such application for provisional arrest shall he made :

a. by post or by any other means affording evidence in writing;

b. by telephone, wireless telegraphy, radio or television. In these cases, the requested authority must exercise the right of assuring itself forthwith of the authenticity of the application by immediate enquiry of the requesting authority.

16. An application for provisional arrest must identify either a particular warrant for arrest or a document of equivalent import, or a certificate of final conviction. It must set out the nature, the time and the place of the offence and as detailed a description as possible of the wanted person. It must also state that a formal request for extradition will ho sent forthwith.

17. As soon as the provisional arrest has been made the requesting High Contracting Party shall ho informed.

18. An application for provisional arrest may contain a request for the provisional seizure of property which is essential to the proper conduct of the proceedings in the requesting High Contracting Party and which appears to fall within the categories mentioned in Article 18.

19. As soon as a requested authority finds a person who is believed to bo the subject of an application for provisional arrest, it will seek to establish his identity without delay. If it is clear from the nature, time and place of the offence that the person could not have committed it, the requesting High Contracting Party shall he informed of the reasons which preclude provisional arrest, and if the person is detained he shall be released immediately.

20. When a wanted person has been put under provisional arrest, the request for extradition must be handed to the requested High Contracting Party within 14 days of the date of arrest. If this period is exceeded, the provisional arrest shall be discontinued.

21. Where provisional arrest is discontinued because the requesting High Contracting Party has failed to keep to the time-limit laid down in the preceding paragraph, failure shall not prejudice the request for extradition.

ARTICLE 1 7

Procedure

Except where the Convention provides otherwise, the procedure and the decision regarding extradition shall be in accordance with the law of the requested High Contracting Party.

ARTICLE 1 8

Delivery and return of property requested

22. The authorities of the High Contracting Parties shall provide each other, on request, with property :

a. which may be required as evidence ;

b. which a person claimed or his accomplice may have acquired as a result of the offence outside the territory of the requested High Contracting Party or which he may have acquired in exchange for that property outside the said territory and this shall remain the case even when the said property would be liable to seizure or confiscation in the territory of the requested High Contracting Party.

23. The rights which third parties may have acquired in the property in question shall be preserved. Where such rights exist, the property shall be returned to the High Contracting Party which delivered it, as soon as possible and without charge, at the end of the trial.

24. When requested property is needed for preliminary criminal investigation, the requested High Contracting Party may temporarily retain it or may deliver it on condition that it be returned for such investigation.

ARTICLE 1 9

Language to be used and translations

Insofar as the request for extradition and other documents mentioned in this Convention and written evidence to be offered in the extradition proceedings are not in an official language of the requested High Contracting Party, the requesting High Contracting Party shall send to the requested High Contracting Party translations either in an official language of the requested High Contracting Party or in one of the official languages of the Council of Europe.

ARTICLE 20

Transit through the territory of a High Contracting Party

25. A High Contracting Party shall grant, upon request through diplomatic or consular channels, the necessary permission and facilities for the transit either through its territory, or in an aïreraf t or ship flying its flag, of a person requested or extradited by another High Contracting Party for an offence which is extraditable under this Convention.

26. In cases where air transport is used, the following provisions shall apply :

a. When no landing is envisaged, the requesting High Contracting Party shall notify the High Contracting Party over whose territory the flight is to be made and shall certify the presence of one of the documents provided for in Article 14, paragraph 3, sub-paragraph («). In the case of a forced landing this notification shall be deemed to be a request for provisional arrest and the requesting High Contracting Party shall submit a request for transit in accordance with the provisions of paragraph 1 of this Article.

b. When a landing is envisaged, the requesting Higli Contracting Party shall submit a request for transit.

27. When the person concerned is also wanted in a High Contracting Party which lias received a request for transit, negotiations shall take place with the requested High Contracting Party in order to decide, in accordance with the principles mentioned in Article 13, whether proceedings, or, in appropriate cases, the execution of the sentence, shall take place first in the High Contracting Party of transit or in the requesting High Contracting Party.

ARTICLE 21

Expenses

Except where the Convention provides otherwise, no reimbursement of expenses shall be required from a High Contracting Party.

ARTICLE 22

Other Agreements

Nothing in this Convention shall affect the provisions of any other agreement concluded between certain High Contracting Parties providing wider opportunities or facilities 'for extradition.

ARTICLE 23-(for insertion in final clauses)

The High Contracting Parties may, by a unanimous decision, invite any State which is not a Member of the Council of Europe to accede to this Convention.

Any State so invited may accede by depositing its instrument of accession with the Secretaire- General of the Council of Europe. Accession shall take effect on the date of deposit of the instrument.