Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 610
09 January 1957

Draft European Multilateral Convention on Extradition

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Hermann KOPF, Germany

1. 1956 - 8th Session - Third part

Draft Recommendation

The Assembly,

Having been consulted by the Committee of Ministers on the text of a draft European Multilateral Convention on Extradition (Doc. 556) prepared in the light of Recommendation 66 (1954) of the Assembly;

Reaffirming its conviction that, in view of the close relations developing between the Members of the Council of Europe, it is desirable to conclude a European Multilateral Convention on Extradition to ensure the punishment of persons committing offences under the jurisdiction of a Member State of the Council and seeking refuge on the territory of another Member State, and to simplify so far as possible extradition procedure;

Having noted that the Government Experts have prepared a draft model Bilateral Convention and a draft European Multilateral Convention,

Expresses the wish that the Committee of Ministers should declare themselves in favour of adopting the draft Multilateral Convention, which is more likely to contribute towards the achievement of the aims of the Council of Europe;

Approves the draft European Multilateral Convention prepared by the Government Experts, subject to the amendments contained in the report of the Committee on Legal and Administrative Questions which is appended hereto;

Recommends that this report be submitted by the Committee of Ministers to the Government Experts responsible for preparing the Convention, with a view to a final revision of the text, and expresses the hope that the Convention will be signed and ratified by the Member States at an early date.

Report of the Committee on Legal and Administrative Questions (Rapporteur : M. KOPF)

By letter dated 8th October 1956, the Committee of Ministers requested the opinion of the Assembly on a draft European Multilateral Convention on Extradition (Doc. 556).

The Committee on Legal and Administrative Questions considered this draft Convention at a meeting on 9th January 1957. This report was unanimously adopted.

Your Committee notes that the draft Convention prepared by the Committee of Government Experts goes some way towards codifying European practice as regards extradition. This draft is based on the traditional principles of extradition whose main purpose is to ensure that criminals and other offenders are brought to trial.

The obligation to extradite is explicitly laid down in Article 1 which reads :

"The Contracting Parties undertake to surrender to each other... all persons against whom the competent authority of the requested Party are proceeding... or who are wanted..."

Limits have, however, been set to the obligation to extradite. It is necessary that the offence in respect of which extradition is requested should be of a certain gravity and not of a political or purely military nature.

This draft Convention is likely to meet the requirements of countries whose extradition law takes into account humanitarian considerations such as the age or health of the person wanted, thereby narrowing to some extent the scope of the law. These countries may, under the terms of Article 26, introduce a certain amount of flexibility into the Convention by entering a reservation in respect of one or more provisions in the Convention.

It appears that this draft will be acceptable to most of the Member States of the Council of Europe. A real and successful effort has been made to co-operate in a field where each State normally reserves to itself a freedom of action founded on legal, historical and political traditions and material considerations. This draft may be regarded as a considerable step forward in the task of unifying and co-ordinating the laws of the Member States of the Council of Europe.

Your Committee on Legal and Administrative Questions notes with pleasure that, in general, the authors of the draft Convention have, to a large extent, taken into account the comments made by the Assembly Representatives at the joint meeting with a sub-committee of the Committee of Government Experts, held on 23rd September 1955.

It is desired to underline once again that the draft European Multilateral Convention rather than a series of bilateral treaties is more likely to contribute towards the achievement of the objectives of the Council of Europe.

Your Committee has examined the whole of the draft Convention as drawn up by the Committee of Experts and the following amendments are put forward in the light of this examination :

ARTICLE 3

Political Offences

Paragraph 3 : Delete the words "or a member of his family"; also delete the words "shall not be deemed" and insert the words "shall not necessarily be deemed...".

Statement of Reasons :

Your Committee considers that only the Head of State and not members of his family should be covered by this paragraph more especially as the expression "a member of his family" is much too vague and too broad.

It believes, moreover, that an attempt on the life of a Head of State can, in some cases, be regarded as a political offence. It is felt that extradition should not be granted in such cases and it is suggested that this provision should be made optional. It would then be left to the State in whose territory the author of the attempt has taken refuge to decide whether or not he should be extradited according to the circumstances.

ARTICLE 5

Fiscal Offences

Delete the words "only if the Contracting Parties have so decided in respect of such offence or category of offences", and insert the words "only in the case of an offence or category of offences specifically mentioned in a bilateral agreement concluded between Contracting Parties" instead thereof.

Statement of Reasons :

The word "decided" which is used by the Experts would have enabled Governments to conclude agreements by exchange of notes, whereas, in the opinion of your Committee, all such agreements should be submitted to the procedure normally followed in the case of bilateral agreements, i. e. signature and ratification, preceded, where appropriate, by parliamentary approval.

ARTICLE 21

Transit

Paragraph 1 : Add at the end of this paragraph the words : "due account being taken of Article 3 of this Convention".

Paragraph 2 : To be amended to read : "Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused."

Paragraph 3 : Delete the words "it shall be sufficient to produce the documents mentioned in Article 12, paragraph 2 (a)", and insert the words "it shall be necessary to produce the documents mentioned in Article 12, paragraph 2" instead thereof.

After paragraph 3 add a new paragraph worded as follows :

"Transit shall not be permitted through a territory where the life or liberty of the person claimed would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinions".

Statement of Reasons :

Paragraph 1 : As the political offences in question are those covered by Article 3 of this Convention, it is considered desirable, for the sake of clarity and as suggested by the United Nations High Commissioner for Refugees, to make a reference to this Article.

Paragraph 2 : In the French text, the word "ressortissant" is used in Article 6; it is therefore considered inappropriate to use the word "national" in this Article. It is suggested that in the French text the word "national" should be deleted and replaced by the words "ressortissant, au sens de Varticle 6 du pays requis de transit", the English text being amended to read "national, within the meaning of Article 6, of the country requested to grant transit".

Paragraph 3 : To enable the Party requested to grant transit to determine whether the offence is of a political or military nature, it must be supplied with all the documents mentioned in Article 12.

New paragraph : The United Nations High Commissioner for Refugees has proposed that transit should not be permitted through a territory where the life or freedom of the requested person would be in danger for reasons of race, religion, nationality, social status or political opinion.

Your Committee has examined this proposal and suggests that the paragraph mentioned above should be added to this Article.

ARTICLE 25

Definition of " Detention Order "

In the French text only, replace the words "juridiction repressive" by the words "juridiction penale".

Statement of Reasons:

The words "juridiction penale" are considered more precise than the words "juridiction repressive", which might apply to administration tribunals.

ARTICLE 28

Relations between this Convention and bilateral agreements

Paragraph 2 : Delete this paragraph.

Paragraph 3: To read : "Contracting Parties may conclude among themselves bilateral or multilateral agreements on extradition only for the purpose of supplementing... or of facilitating... therein".

Paragraph 4 : Delete this paragraph and substitute the following instead thereof :

"When, as between two Contracting Parties, extradition takes place on the basis of a uniform law or on the basis of reciprocal arrangements, it shall be possible for them, by mutual agreement, to notify the Secretary-General of the Council of Europe of their intention to exclude their mutual relations on extradition from the field of application of this Convention. Such notification may be made subsequently by States which make such arrangements in the future. The Secretary- General shall inform the other Contracting Parties of any notifications received in accordance with this paragraph."

Statement of Reasons :

Paragraph 2 : This Convention must prevail over all previous bilateral conventions dealing with the same subject. This principle is accepted in paragraph 1 of Article 28. It appears, however, unnecessary to impose upon signatory States a systematic and theoretical examination of the relation between previous bilateral agreements and the European Multilateral Convention.

Paragraph 3 : The word "only" has been inserted to indicate that the number of agreements should be limited.

Paragraph 4 : Your Committee feels that the text prepared by the Experts is not sufficiently clear. Moreover, it is of opinion that such an exception should, by mutual agreement, be brought to the notice of the other Contracting Parties through the Secretary- General of the Council of Europe.