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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

- Extradition -
Effects of the violation of immunity
provided by the Rule of Speciality

Discussion paper proposed by Joana Ferreira (Portugal)

In 2003 an individual, suspect of having committed serious crimes, punishable, among others, as acts of terrorism, was located and arrested in Portugal.

The request for extradition included more than 60 criminal offences. For some of them the request was denied (lapse of time, insufficient guarantees regarding life imprisonment, etc...) but for around 30 offences the extradition was found admissible by decision of the Minister of Justice, and the extradition procedure followed its terms.

By decisions of the competent Court of Appeal, Supreme Court and Constitutional Court (through appeals lodged by the extraditable person who, during the whole process, was in custody in the scope of a Portuguese national case), the extradition was found partly admissible and the fugitive was eventually extradited.

Subsequently the extradited person informed Portuguese authorities that the rule of speciality was being breached in the requesting State. Having been invited, through diplomatic channels, to confirm this information, the requesting State confirmed that the person was being proceeded against for offences other than those for which he had been extradited but also different from the ones for which Portugal had denied the extradition. Indeed, this was the case of new offences that the requesting State had found instrumental and, therefore, not covered by the rule of speciality due to their connection to the offences underlying the decision to grant the extradition.

The Portuguese Court of Appeal, after examining the arguments addressed by the requesting State, found that there was, in fact, a violation of the rule of speciality and therefore ruled that the decision having granted the extradition should be revoked.

That decision was confirmed, with one vote against, by the Supreme Court. Finally, the Constitutional Court decided that, since the decision to grant extradition is dual, both judicial and political, judicial authorities can't declare that decision void but can only recognise the violation of the rule of speciality, leaving to the State, through its representatives (Minister for Foreign Affairs), the task of deciding on its full impacts.

We would like to know from this Committee:

1. *Did your States ever face a clear case of violation of the rule of speciality?*
2. *Was the case subsequently solved through a request for extension of cooperation [article 14, paragraph 1, subparagraph a)]?*
3. *Do you have any experience with decisions similar to the ones taken by the Portuguese Court of Appeal and Supreme Court?*
4. *Do you know of any cases where a decision to grant extradition was declared void after the surrender of the extraditable person?*