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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)

The application of Article 16 of the European Convention on Extradition

Question submitted by Ms Joana Ferreira (Portugal)

While an extradition procedure is pending, the person sought, in case of urgency, can be provisionally arrested. This situation is requested by the requesting Party and the requested Party will decide the matter in accordance with its law.

This solution that is envisaged for exceptional cases, in practice becomes almost the rule since it is the only way to assure that, in the end, the extradition decision can be enforced.

In such a case, Article 16 of the European Convention on Extradition establishes delays from 18 to 40 days, at the end of which, and if the extradition request is not presented, the person will be released.

The Portuguese Law has a similar set of solutions: if a person has been provisionally arrested, usually because there is an INTERPOL red notice, the requesting State must confirm, in 18 days, that the request will be presented and must present it before the 40th day. If it does not do so the person will be released.

One of the Portuguese Courts of Appeal has been using a different set of solutions. Instead of keeping the extraditable person provisionally arrested, the Court has more and more the tendency to release him or her (under bail, imposing upon the extraditable person the obligation to appear at the police headquarters or simply taking note of his or her residence) and request that the central authority informs the requesting State about the need to respect the delays established under Article 16. The reasoning is the following: the measures imposed are coercive measures and in this way act as a substitute to the provisional arrest situation. So the grounds for the application of Article 16 are basically the same.

We would like to hear from you about your experience in this situation, especially:

1. Do your executing authorities impose coercive measures instead of provisionally arresting a person in view of extradition?
2. In such a case, when the person is not under provisional arrest in view of extradition, is Article 16 of the Convention on Extradition applicable? Should requested States be invited to respect the delays mentioned by Article 16 in such situations?