

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (80) 7

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE PRACTICAL APPLICATION OF THE EUROPEAN CONVENTION ON EXTRADITION

*(Adopted by the Committee of Ministers on 27 June 1980
at the 321st meeting of the Ministers, Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling Resolution (75) 12 on the practical application of the European Convention on Extradition ;

Desirous of extending and further facilitating the application of this convention, which was opened for signature on 13 December 1957 and entered into force on 18 April 1960,

I. Recommends the governments of member states :

1. if they are not yet Contracting Parties to the convention, to ratify it as soon as possible ;
2. if they are Contracting Parties to the convention, to be guided in its practical application by the following principles :

Concerning the use of extradition

When deciding on whether to request extradition, the requesting state should take into consideration the hardship which might be caused by the extradition procedure to the person concerned and to his family, where this procedure is manifestly disproportionate to the seriousness of the offence and where the penalty likely to be passed will not significantly exceed the minimum period of detention laid down in Article 2, paragraph 1, of the convention, or will not involve deprivation of liberty.

In the case of enforcement of a sentence or detention order, the requesting state should apply the same principle of proportionality, particularly where the remainder of the sanction to be served does not exceed a period of four months.

Concerning the extradition procedure

Irrespective of the administrative or judicial nature of the extradition proceedings, the person concerned :

- a. should be informed, promptly and in a language which he understands, of the extradition request and the facts on which it is based, of the conditions and the procedure of extradition, and, where applicable, of the reasons for his arrest ;
- b. should be heard on the arguments which he invokes against his extradition ;
- c. should have the possibility to be assisted in the extradition procedure ; if he has not sufficient means to pay for the assistance, he should be given it free.

Concerning summary extradition

With a view to expediting extradition and keeping the period of provisional arrest as short as possible, consideration should be given to the use of a summary procedure enabling the rapid surrender of the person sought without following ordinary extradition procedures, provided that the person concerned consents to it.

Concerning provisional arrest (Article 16 of the convention)

- a. The requesting authority should ask for the provisional arrest of the person sought only if there are strong reasons to suggest that otherwise the extradition could not be effected.
- b. The period of provisional arrest should be kept as short as possible. It should exceed the period of eighteen days only in cases of necessity, particularly where the requesting authority indicates difficulties in submitting the documents within that period.

Concerning transit (Article 21 of the convention)

- a. To render the procedure more expeditious, arrangements for obtaining the consent of the transit states should be made, whenever possible, at the time extradition is requested. The requested state should be promptly informed of the means of transit envisaged and whether transit permission is being sought from other Contracting States.
- b. In principle, the requested state should comply with the wishes of the requesting state with regard to the way in which the transit is to be effected. However, in cases of particular difficulty, the two states should consult each other on the appropriate means of transport (rail, road or air) and possibly on the place where the person to be extradited is to be handed over.
- c. A Contracting State which has been asked to grant transit should act on the request and make the necessary arrangements in a way as to avoid any delay.
- d. If, under the conditions mentioned above, the requested state uses a summary extradition procedure, and transit involves the presence of the person concerned in the territory of the transit state for only a short period, the transit state should consider whether transit can be authorised without the production of all the documents mentioned in Article 12 of the convention.
- e. Transit by air should be used as widely as possible because it is likely to facilitate and accelerate the handing over of the person to be extradited. As a general rule, the person to be surrendered should be escorted ;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those Contracting States which are not members of the Council of Europe.