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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Committee of Experts on the Operation
of European Conventions in the Penal Field

(PC-OC)

Paper Submitted by INTERPOL

DURATION OF PROVISIONAL ARREST
WITH A VIEW TO EXTRADITION

The provisional arrest with a view to extradition of a wanted person who has been traced constitutes the stage prior to the formal request for extradition¹.

This stage is also called the pre-extradition procedure, and is the most restrictive measure, since it allows a person who has been located to be detained and prevented from absconding before the extradition procedure proper can begin. This is why it is generally applied in accordance with strict procedures set out in the national law of each State.

The possibility of requesting provisional arrest is generally provided for in conventions and bilateral treaties on extradition, a number of which also cite Interpol as a means of transmitting requests for provisional arrest, particularly in urgent cases (see in particular, the Commonwealth Scheme for the Rendition of Fugitive Offenders as amended in 1990, Article 4 (Provisional Warrants)(1)).

The duration of provisional arrest with a view to extradition, which is the subject of the present document, is fixed in each of these international instruments (see Appendix below).

During a study recently carried out by Interpol's General Secretariat on the legal value accorded by its member countries to red notices², a number of countries sent *specific details about the duration of provisional arrest with a view to extradition*.

The present document is based on the General Secretariat's analysis of those details. The information below is given as an indication and is not an exhaustive report on the subject.

¹ The extradition procedure proper only begins when the formal request for extradition has been received through diplomatic channels.

² Red notices are used for the international circulation of national arrest warrants and requests for individuals to be arrested with a view to extradition.

ANDORRA

Information provided by the National Central Bureau (NCB) on 13th February 1997.

Duration of provisional arrest with a view to extradition: **18 to 40 days**.

Applicable provision: Article 9 of the Qualified Law on Extradition of 28th November 1996.

COSTA RICA

Information provided by the National Central Bureau (NCB) on 21st March 1997.

Duration of provisional arrest with a view to extradition: **60 days**.

Applicable provisions: Articles 9(b) and 11 of the Law on Extradition No. 4795 of 8th November 1976.

DENMARK

Information provided by the Ministry of Justice on 5th March 1997.

Duration of provisional arrest with a view to extradition:

- **prior police check: 1 day**

- provisional detention with a view to extradition: **18 to 40 days** (implicitly formulated).

Applicable provisions: Sections 13 and 19 of the Danish Act on Extradition and Section 762 (1) (1) of the Danish Administration of Justice Act.

GREECE

Information provided by the National Central Bureau (NCB) on 15th October 1997.

Duration of provisional arrest with a view to extradition: **30 days**.

Applicable provision: Article 436 *et seq.* of the Code of Criminal Procedure.

ISRAEL

Information provided by the Ministry of Justice on 16th March 1997.

Duration of provisional arrest with a view to extradition: **40 days**.

Applicable provision: Article 16 of the European Convention on Extradition.

FRANCE

Information provided by the Ministry of the Interior on 17th November 1997.

Duration of provisional arrest with a view to extradition:

- within **24 hours** following the arrest, the requesting country must reconfirm its request for arrest,

- provisional detention with a view to extradition: not stated.

Applicable provisions: not stated.

LATVIA

Information provided by the National Central Bureau (NCB) on 19th March 1997.

Duration of provisional arrest with a view to extradition: **15 to 30 days**.

Applicable provision: Latvian Republic Criminal Proceedings.

LUXEMBOURG

Information provided by the Ministry of Justice on 20th June 1997.

Duration of provisional arrest with a view to extradition: **15 to 30 days**, depending on whether or not the request comes from a neighbouring country.

Applicable provision: Law of 13th March 1870 on the Extradition of Foreign Offenders.

NAMIBIA

Information provided by the Ministry of Justice via the Ministry of Foreign Affairs on 7th May 1997.

Duration of provisional arrest with a view to extradition:

- . **prior police check: 2 days.**
- . provisional detention with a view to extradition: **30 days** from the date of arrest.

Applicable provision: Extradition Act, 1996, Part III (Procedure), Sections 10(4)(b) and 11(9).

PERU

Information provided by the Ministry of Justice (date illegible).

Duration of provisional arrest with a view to extradition:

- . **prior police check: 24 hours, or 15 days** in cases of terrorism, espionage and drug trafficking.
- . provisional detention with a view to arrest: not stated.

Applicable provision: 1993 Constitution, Article 2 (24, 1).

POLAND

Information provided by the Ministry of Justice on 21st March 1997.

Duration of provisional arrest with a view to extradition: **30 days.**

Applicable provision: Article 535 (2) of the Code of Criminal Procedure.

SENEGAL

Information provided by the National Central Bureau (NCB) on 13th June 1997.

Duration of provisional arrest with a view to extradition: **20 days.**

Applicable provision: not stated.

SEYCHELLES

Information provided by the President's Office, Department of Legal Affairs, Attorney General, on 5th February 1997.

Duration of provisional arrest with a view to extradition: **30 days.**

Applicable provision: Extradition Act, Chapter 78.

SWITZERLAND

Information provided by the Federal Police Office on 7th May 1997.

Duration of provisional arrest with a view to extradition: **18 to 40 days.**

Applicable provision: Article 16 of the European Convention on Extradition.

UKRAINE

Information provided by the National Central Bureau (NCB) on 21st May 1998.

Duration of provisional arrest with a view to extradition:

- . **prior police check: 72 hours.**
- . provisional detention with a view to extradition: Not stated.

Applicable provision: not stated.

APPENDIX

DURATION OF PROVISIONAL ARREST WITH A VIEW TO EXTRADITION FIXED IN INTERNATIONAL INSTRUMENTS ON EXTRADITION

For the States Party to the Convention on Extradition of the Economic Community of West African States: 20 days

Article 22 (Provisional Arrest), paragraph 4

"Provisional arrest may be terminated if, within a period of twenty (20) days after arrest, the requested State has not received the request for extradition and the documents mentioned in Article 18. The possibility of provisional release at any time is not excluded but the requested State shall take any measures which it considers necessary to prevent the escape of the person sought."

For the States Party to the Inter-American Convention on Extradition: 60 days

Article 14 (Provisional Detention and Precautionary Measures), paragraph 3

"If the request for extradition, accompanied by the documents referred to in Article 11 of this Convention, is not presented within sixty days of the date on which the provisional detention referred to in Paragraph 1 of this Article commenced, the person sought shall be set free."

For the States Party to the European Convention on Extradition: 18 to 40 days

Article 16 (Provisional Arrest)

"[...] Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought [...]"

For the States Party to the League of Arab States' Extradition Agreement: 30 days

Article XI

"[...] Meanwhile, however, this temporary arrest as a precautionary measure, may be made for a period, not exceeding thirty days, after which he shall be released, if the required documents and formalities or a new request are not received [...]."

For the States Party to the Commonwealth Scheme for the Rendition of Fugitive Offenders as amended in 1990: 30 to 60 days

Article 8 (Discharge by judicial authority) (2)

- (a) "not later than two months from the fugitive's committal to prison as mentioned in clause 5, or
- (b) not later than one month from the date of the order for his return made as mentioned in clause 7."
