

PC-OC INF 4  
Extradition

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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)**

**European Convention on Extradition (ETS 24)  
A GUIDE TO PROCEDURES**

This guide is mainly based on the guide published in July 1993 by the Home Office in the United Kingdom.

It includes contributions from:

[Belgium](#), [Croatia](#), [Cyprus](#), [Czech Republic](#), [Denmark](#), [Finland](#), [France](#), [Germany](#), [Greece](#), [Hungary](#), [Ireland](#), [Italy](#), [Latvia](#), [Luxembourg](#), [the Netherlands](#), [Poland](#), [Portugal](#), [Spain](#), [Switzerland](#) and the [United Kingdom](#).

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**Hard copy contributions have also been submitted to the Secretariat by:**  
Bulgaria, Estonia, Israel, Lithuania, Norway, Russian Federation, Slovakia, Sweden, Turkey

This document stands to be completed and updated upon the Secretariat receiving contributions from States Parties to the European Convention on Extradition.

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# BELGIUM

## EXTRADITION PROCEDURES IN BELGIUM

### 1. BASIS IN LAW

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Extradition procedure in Belgium is governed by the Law of 15 March 1874 (as amended by the Law of 31 July 1985).

Under this Law, extradition between Belgium and foreign states is only possible where a treaty based on a reciprocal agreement exists. Relations between Belgium and its European partners are governed by the following conventions:

\_ for the Netherlands and Luxembourg, by the Benelux Extradition and Mutual Legal Assistance Treaty of 27 June 1962;

\_ for Germany, by the Benelux Extradition and Mutual Legal Assistance Treaty of 17 January 1958 and the Additional Protocol of the same date;

\_ for Denmark, by the Convention of 25 March 1876, supplemented by the Additional Declarations of 25 October 1926 and 14 March 1933;

\_ for Spain, by the Convention of 17 June 1870, supplemented by the Declarations and Additional Agreements of 28 January 1876, 22 June 1882, 4 March 1903, 24 January 1947, 6 March 1958;

\_ for France, by the Extradition Convention of 15 August 1874, supplemented by the Additional Agreements of 14 November 1889, 18 July 1900, 24 June 1926, 25 April 1935, 25 May 1977;

\_ for Greece, by the Treaty of 26 June and 9 July 1901, supplemented by the Additional Declaration of 9 April 1907 - 27 March 1908, by the Additional Convention of 4 August 1933 and the Agreement of 24 February - 8 March 1978;

\_ for Italy, by the Convention of 15 January 1875, supplemented by the Declarations for 10 March 1879, 30 December 1881, 28 January 1929 and the Additional Convention of 2 December 1935;

– for Portugal, by the Convention of 8 March 1881, supplemented by the Conventions of 16 December 1881 and 9 August 1961

– for the United Kingdom, by the Treaty of 29 October 1901, supplemented by the Conventions of 5 March 1907, 5 March 1911, 8 August 1923, the Declarations of 1 August 1928, 1 April 1932 and 13 May 1937 and the Agreements of 15 May 1975 and 10 September 1985.

The Conventions are supplemented in law in accordance with a certain number of United Nations Conventions ratified by Belgium, notably the Single Convention on Narcotic Drugs of 30 March 1961, supplemented by the Protocol of 25 March 1972.

It should be noted that when the implementation convention of the Schengen Agreement of 19 June 1990 comes into force, only the European Convention on Extradition of 13 September 1957 will apply in so far as extradition procedures between Belgium, Germany, Spain, France, Italy and Portugal are concerned.

## **2. BODIES INVOLVED IN THE PROCEDURE**

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### **2.1. The Ministry of Justice**

This is the central authority. Its main procedural responsibilities are as follows:

– the caseworking section of the Criminal Department is responsible for the transmission of requests from foreign countries to the Belgian judicial authorities and from the Belgian judicial authorities to the authorities in foreign countries;

– this Department is also responsible for determining whether or not the requests are admissible;

– it is finally the Minister of Justice who, on behalf of the Government, takes the decision whether or not to grant extradition.

### **2.2. The Ministry of Foreign Affairs**

The Justice Department of this ministry ensures the transmission and safe receipt of requests for extradition made by or sent to Belgium by diplomatic channels. It also makes a preliminary examination as to whether or not the request is admissible (the existence of a treaty).

The Ministry of Foreign Affairs does not however intervene in relations between Benelux States; in such cases procedural contact is made between Ministers of Justice, or even between Public Prosecutor's Offices (see 4 and typical path IV below).

### **2.3. The State Counsel's Office**

It is the competent Crown Prosecutor, authorised by the Chief Public Prosecutor, or the Chief Public Prosecutor himself, in the case of a conviction and sentencing at appeal stage, who makes requests for extradition, with a view to prosecuting or implementing the sentence in Belgium (where Belgium is the requesting State); it is he who oversees the implementation of extradition requests made by foreign countries (in cases where Belgium is the requested State).

### **2.4. Courts**

In the hypothesis that Belgium is the requested State, two judicial authorities are called upon:

- \_ the Inner Chamber of the Court of First Instance in the district where the person was arrested, which enforces the arrest warrant sent by the foreign authorities (exequatur);
- \_ the Indictment Division of the Court of Appeal in the district where the person was arrested, which rules on the judgment of the Inner Chamber concerning the arrest warrant;
- \_ and which, in addition, gives a stated opinion on the request for extradition, if the latter is admissible. This is communicated to the Ministry of Justice.

It should be noted that the Court of Cassation may also be brought into the procedure when an appeal is lodged against the implementation of the exequatur of an arrest warrant by the Indictment Division.

## **3. NATURE OF THE EXTRADITION**

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Under Belgian law, extradition is an act of sovereignty falling exclusively within the power of the executive. The consequences of this are as follows:

- \_ the Ministry of Justice, on behalf of the Government, takes the decision to extradite (by ministerial order);
- \_ this is a unilateral decision by an administrative body, can be challenged before the Supreme Administrative Court;
- \_ by contrast, judicial authorities play no part in the decision-making process relating to extradition; the opinion given by the Indictment Division is of a consultative nature and does not constrain the executive.

## **4. DIFFERENT TYPES OF PROCEDURE**

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There are three different extradition procedures: normal procedure, simplified procedure and summary procedure.

Normal procedure requires that all formalities be observed, and implies, in particular when Belgium is the requested State, the involvement of the Indictment Division. This is the longest procedure.

When the fugitive consents to being extradited without formalities, the procedure followed is a simplified procedure. Principally, the procedure is simplified to the extent that the involvement of the Indictment Division is no longer required. The main consequence of this renunciation is the waiver of the speciality rule: the fugitive may be prosecuted in the requesting country for offences not referred to in the request for extradition. This second procedure is considerably quicker than the first.

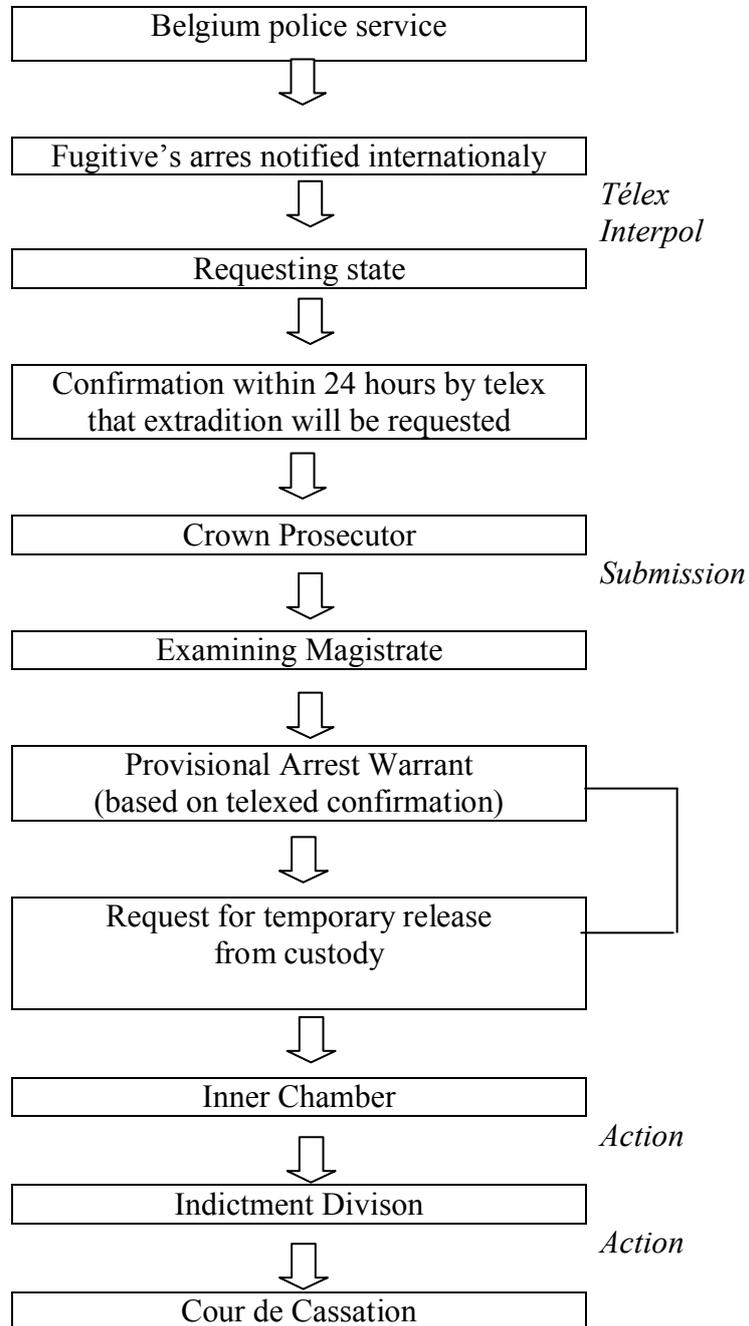
In requests between Benelux countries, if the fugitive consents to extradition without formalities, the third procedure, summary procedure applies. In this case, having been heard by the Crown Prosecutor of the district in which he was arrested, and having formally consented to the extradition, the fugitive is immediately surrendered to the judicial authorities of the requesting country without further formalities. There is no involvement by the Ministry of Foreign Affairs and no involvement or decision by the Ministry of Justice. In this case the surrender must be effected within 5 days of the arrest.

## **5. PRINCIPAL STEPS IN THE PROCEDURE**

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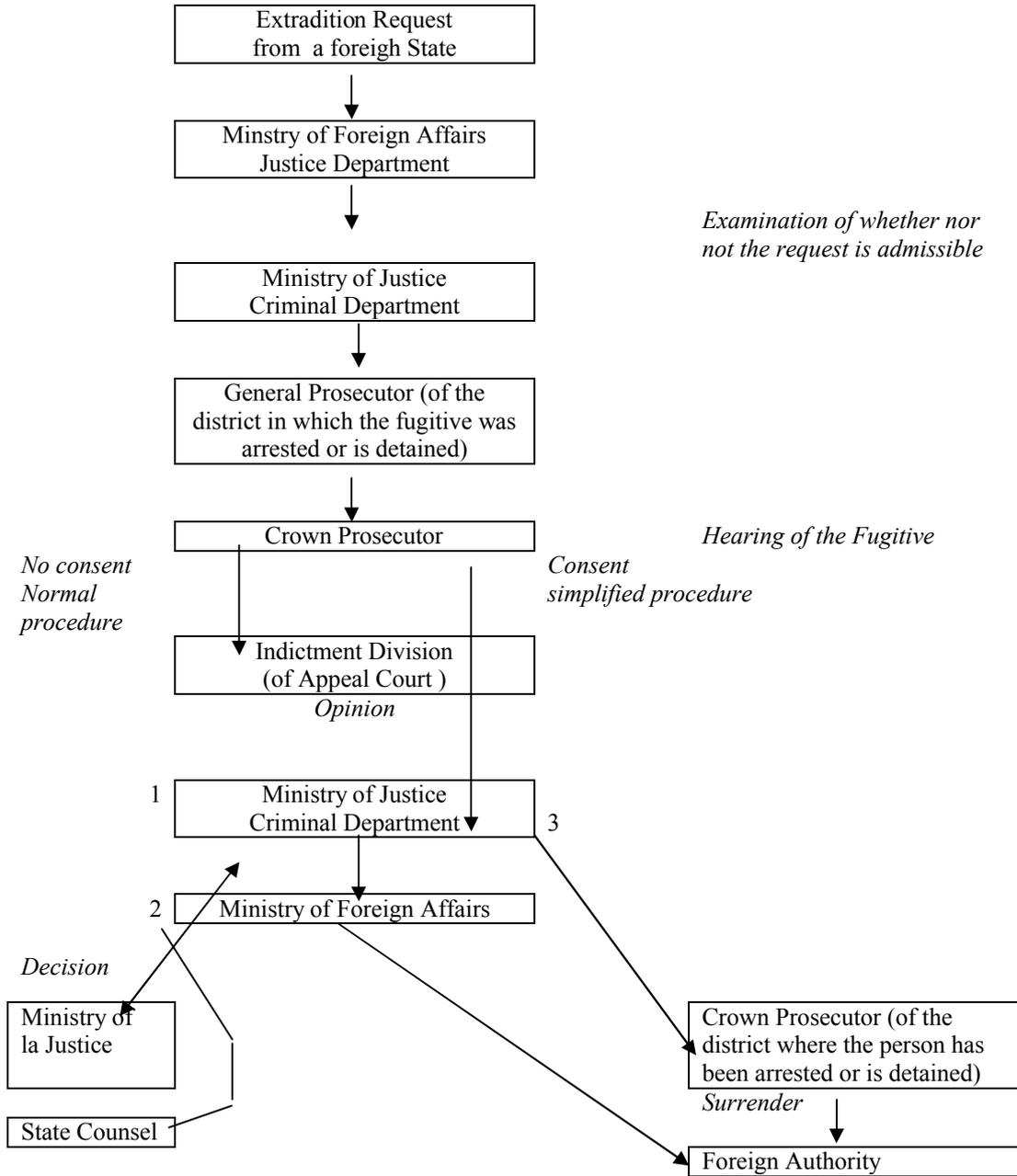
Four typical paths are set out below which illustrate the principal steps in the procedure. The first concerns the arrest of the fugitive, the second the examination of the request where Belgium is the requested State, the third the examination of the request where Belgium is the requested State, and the fourth the summary procedure in the context of the Benelux Treaty.

## TYPICAL PATH I

WHERE BELGIUM IS THE REQUESTED STATE:  
ARREST OF THE FUGITIVE

## TYPICAL PATH II

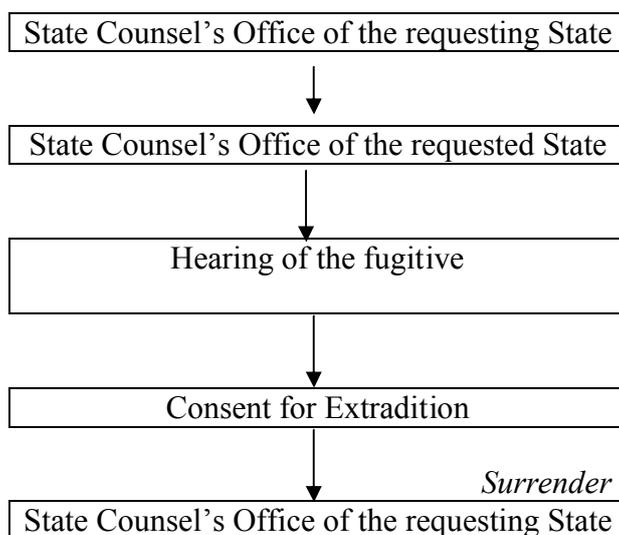
### WHERE BELGIUM IS THE REQUESTED STATE: EXAMINATION OF THE REQUEST



**TYPICAL PATH III  
WHERE BELGIUM IS THE REQUESTING STATE**



**TYPICAL PATH IV  
SUMMARY PROCEDURE IN THE CONTEXT OF THE  
BENELUX TREATY**





**BULGARIA**

**NOT AVAILABLE ON INTERNET**



## CROATIA

Croatia has been a party to the European Convention on Extradition and the two Additional Protocols since April 1995. It has concluded bilateral extradition treaties with several other countries.

Extradition proceedings are conducted in accordance with the provisions of the European convention or the bilateral treaties and the provisions of the Code of Criminal Procedure.

Under the Code of Criminal Procedure, extradition to countries with which no treaty has been concluded is possible provided there is a reciprocal arrangement.

### **I. Passive extradition**

When another country requests the extradition of an individual who is on Croatian territory, there are two possible procedures: the emergency procedure and the normal procedure.

#### **1. Commencement of proceedings**

a. Emergency procedure: the requesting country requests the provisional arrest of the person sought for the purposes of extradition. The request for provisional arrest must be submitted to the national Interpol central office for transmission to the Ministry of Justice (although it is possible to submit requests through diplomatic channels). The Ministry of Justice forwards the request to the competent departmental court.

The person sought will be arrested by the police and brought before the examining judge of the competent court within 24 hours.

After hearing and identifying the person sought, the examining judge decides whether or not to issue a provisional arrest warrant and forwards the decision to the Ministry of Justice, which must in turn inform the requesting country.

In accordance with Article 16 of the convention, the requesting country must submit the request for extradition together with the necessary supporting documents within 18 days, which may be extended to 40 days.

b. Normal procedure: the requesting country forwards the request for extradition together with the necessary supporting documents via diplomatic channels or directly to the Ministry of Justice (where the requesting country is also a party to the second Additional Protocol to the convention or where this procedure is provided for in a bilateral treaty).

The Ministry of Justice forwards the request to the competent court.

## 2. Court proceedings

Upon receipt of the request for extradition, the examining judge questions the person sought and hears his or her lawyer and the competent State prosecutor.

Basing his or her decisions on the facts ascertained and on those contained in the supporting documents accompanying the request, the examining judge forms an opinion on whether the legal conditions for extradition have been fulfilled, sets out this opinion in writing and forwards it with all the relevant documents to the court required to take the decision.

The court considers whether the legal conditions for extradition have been fulfilled and takes one of the following decisions:

- A decision stating that the legal conditions for extradition have been fulfilled. This decision is sent to the person concerned, his or her lawyer and to the State prosecutor. The person concerned has the right to lodge an appeal against this decision with the Supreme Court of the Republic, which may set aside, confirm or modify the decision of the court. The person sought may waive his or her right of appeal and in this way speed up the extradition procedure. However, it should be noted that Croatia does not have a simplified extradition procedure.

- A decision refusing to grant extradition because the legal conditions have not been fulfilled. The court must of its own motion forward this decision to the Supreme Court, which may set aside, confirm or modify the decision of the court.

## 3. Completion of the passive extradition proceedings

Once the positive decision (ie where the legal conditions have been fulfilled) taken by the judicial authority becomes irrevocable, the file is forwarded to the Minister of Justice, who decides whether extradition is to be granted or not. The Minister's reasoned decision, whether positive or negative, is forwarded directly or via diplomatic channels to the Ministry of Justice of the requesting country.

If the Supreme Court confirms the negative decision (refusal to grant extradition), the Minister of Justice cannot take any further action on the request. The Minister is bound by the decision of the Supreme Court and cannot authorise extradition. This decision is sent to the Ministry of Justice to be forwarded to the Ministry of Foreign Affairs, which will in turn send it on to the competent authority in the requesting country.

## **II. Active extradition**

When a person is being sought in order to be brought to trial in Croatia or to serve a sentence handed down in Croatia, and if this person has been arrested in another country, the Minister of Justice may apply for extradition.

- Depending on the circumstances of the case, a request may be made (via the national Interpol central office or diplomatic channels) for the provisional arrest of the person sought on the territory of the other country. In accordance with Article 16 of the convention, the formal request for extradition must be submitted within 18 or 40 days from the date of the provisional arrest.

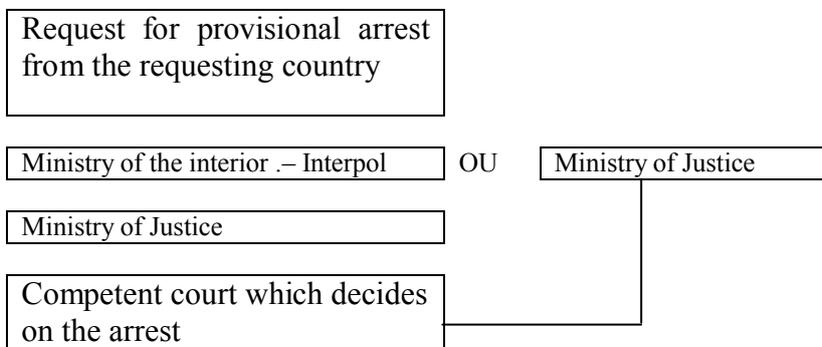
- The extradition proceedings are initiated by the competent judicial authority: the State prosecutor, the court or the prison administration. These authorities prepare the documents specified in Article 12 of the convention, which include an arrest warrant, the charges brought by the State prosecutor, the conviction, a description and any other information required to establish the identity and nationality of the individual in question, the relevant laws, etc.

- The competent judicial authority forwards the request and supporting documents to the Ministry of Justice (Directorate of Mutual International Assistance in Judicial Matters and Co-operation), which verifies the documentation, makes any necessary additions to it and translates it into the requisite language, in accordance with the provisions of the convention or the relevant treaty.

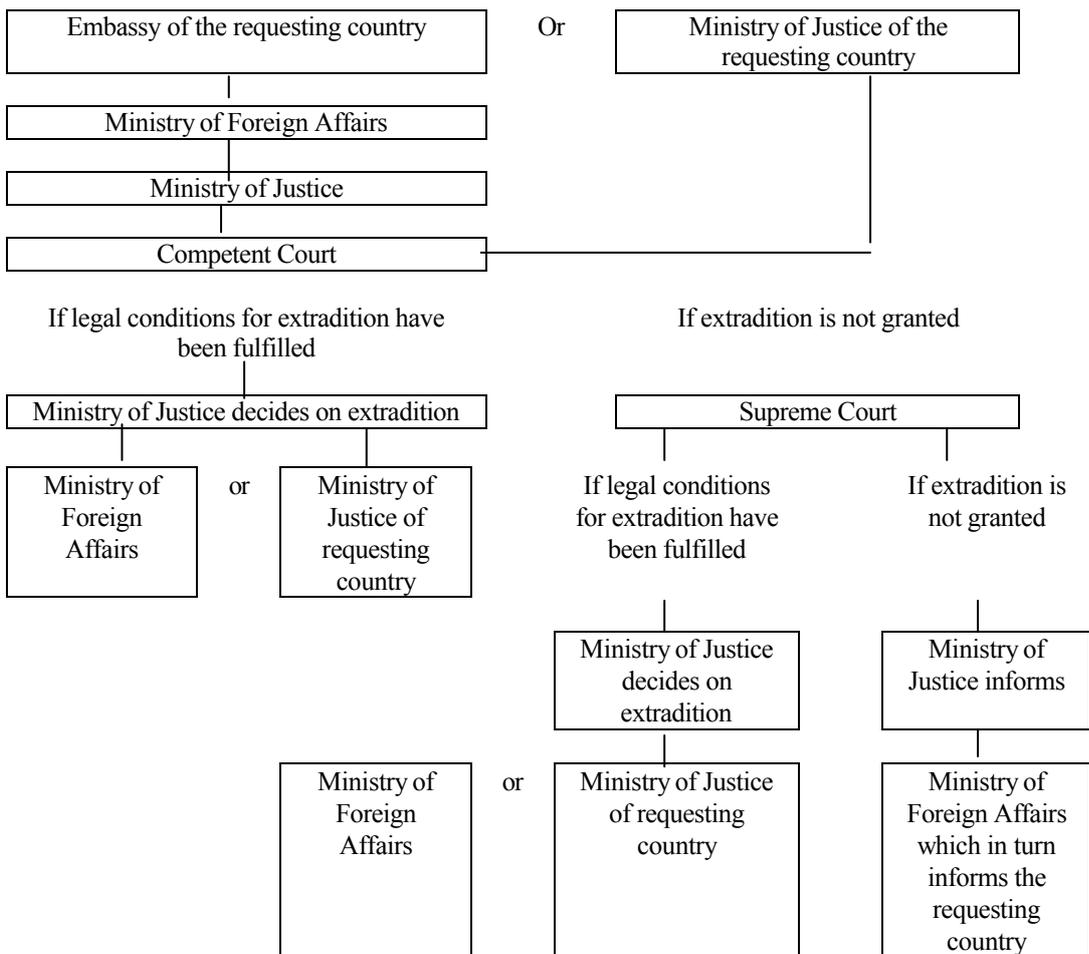
- The Minister of Justice takes the decision whether or not to apply for extradition. If the Minister's decision is positive, the documentation is sent directly or through diplomatic channels to the competent judicial authorities of the country in question.

I. PASSIVE EXTRADITION

a. Request for provisional arrest



b. Normal procedure



## CYPRUS

### Extradition Procedure in Cyprus

#### 1. General

1.1. Extradition procedures in Cyprus are governed by the Extradition of Fugitive Offenders Law No 97 of 1970 which was enacted immediately after we became party (by ratification Law 95 of 1970) to the European convention on Extradition in order to facilitate its implementation.

1.2. Cyprus also ratified the two Additional Protocols to this Convention by Ratification Laws nos 23 of 1979 and 17 of 1984 respectively.

1.3. The Extradition of Fugitive Offenders Law No 97 of 1970 combines both the provisions of the European Convention and those of the relevant Commonwealth Scheme, consequently it applies to requests made to Cyprus by

- all other country-members to the European Convention, and

- countries of the Commonwealth designated by a decision of the Council of Ministers according to its Article 4.

1.4. The countries of the Commonwealth designated by decisions of the Council of Ministers are:

Australia	Papua-New-Guinea
Botswana	Singapore
Fidji	Sri Lanka
Malta	Tonga
Mauritius	United Kingdom
Nigeria	Zambia

1.5. The same Law, 97 of 1970, applies also to requests made by any other foreign State with which an extradition treaty is in force.

1.6. Cyprus has concluded bilateral agreements on legal co-operation which include provisions on extradition with:

- Bulgaria (Ratification Law 18 of 1984)
- Hungary (Ratification Law 7 of 1983)
- former Czechoslovakia (Ratification Law 68 of 1983)
- former Soviet Union (Ratification Law 172 of 1986)

1.7. It is also bound by bilateral agreements on extradition which were concluded by the United Kingdom and extended to Cyprus as its colony and which remain in force after independence by specific provision in the Treaty of Establishment.

1.8. Such is the case with the United States of America, and Iceland.

1.9. Owing to the difference in the legal systems of Europe and the commonwealth regarding the prima-facie requirement, it was found necessary to amend Law 97 of 1970 by Law 97 of 1990 so that the prima-facie requirements is no longer applied in applications under the European convention.

1.10. The extradition procedure is a combination of the administrative and the judicial, and it involves separate functions for the Minister of Justice and Public Order and the Courts.

The following agencies have a role in extradition matters:

- Ministry of Foreign Affairs,
- Ministry of Justice and Public Order,
- Police,
- Office of the Attorney General of the Republic,
- courts.

## 2. Procedure concerning requests made to Cyprus

2.1. The extradition process begins either with a request for the provisional arrest of the fugitive or by a formal request submitted usually through the diplomatic channel.

2.2. When a request for provisional arrest is received by the Ministry of Justice and Public Order either directly or through Police or Diplomatic Channels, if at first instance it seems unlikely that it would be refused outright, the Police is requested to seek, find and arrest the fugitive provisionally.

2.3. A police officer presents the information received with the request of the President of the District Court of the district where the fugitive was located and seeks the issue of a provisional warrant for the fugitive's arrest.

2.4. A provisional warrant may be issued upon such evidence as would, in the opinion of the President of the District Court, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of his Court.



2.5. A request for provisional arrest may be also received directly by the Police, through police channels, and it will be processed in the same way as described in paragraphs 2.3 and 2.4 above.

2.6. When a provisional warrant of arrest is issued in this case the Court which issued it has to notify forthwith the Minister of Justice and Public Order who may by order cancel the warrant and if the person was arrested discharge him from custody.

2.7. When a fugitive is arrested in pursuance of a provisional warrant of arrest, he is brought as soon as practicable (within 24 hours) before a District Court Judge who at the request of the Counsel of the Republic, from the Office of the Attorney General, Prosecuting Authority, remands him either in custody or on bail pending authority by the Minister of Justice and Public Order to proceed. The Judge may fix a reasonable period (of which the Minister is notified) according to the period prescribed in the applicable treaty, after which the person is immediately discharged from custody unless the authority by the Minister to proceed is submitted. However he may be rearrested following a formal request for extradition, the issue of the authority to proceed by the Minister and an arrest warrant.

The fugitive has a right to legal representation and if his financial means are not sufficient, the Court appoints a defence lawyer to represent him and the lawyer's expenses and fees are covered by the Republic.

2.8. After the extradition request is received, usually through diplomatic channels, and the documents are examined at the Ministry of Justice and Public Order in collaboration with the Office of the Attorney General and found in accordance with the relevant Law and applicable treaty, the Minister of Justice and Public Order signs the authority to proceed which is subsequently submitted to the Court together with the extradition request and the supporting documents. copies of them are also given to the legal representative of the fugitive.

Additional documents and information may be required from the requesting State by the Counsel of the Republic either at this stage or at any time during the hearing of the case.

2.9. When a formal extradition request is received at the Ministry of Justice and Public Order, after the documents are examined there in collaboration with the Office of the Attorney General and found to be in accordance with the Law and the applicable treaty, the Minister of Justice and Public Order signs the authority to proceed. (If the examination of documents is likely to take days, after a first instance inspection, the Police is requested to proceed in the way described in the case of a request for provisional arrest).

2.10. The authority to proceed, together with the extradition request and supporting documents are then submitted to a Judge of the District Court within the jurisdiction of which the fugitive is located or believed to be, who, if he considers it appropriate, as per paragraph 2.4 above, issues a warrant for arrest.

2.11. When arrested, the fugitive is brought as soon as practicable (again within 24 hours) before the Judge who remands him either in custody (usually) or on bail. copies of the documents are given to his legal representative and the date for the hearing is fixed.

2.12. At the hearing, where the Judge is satisfied that the offence to which the authority relates is an extradition offence, the documents submitted meet the requirements of the relevant Law and applicable treaty and the committal of the fugitive is not prohibited, he is required to commit the fugitive to custody, to await the Minister's decision on surrender. The fugitive is informed at the same time by the Judge of his right to make an application for a writ of habeas corpus to secure his discharge and the Ministry is notified accordingly forthwith.

2.13. In applications which are not made under the European Convention the prima facie rule is applied.

2.14. A person committed to custody as per paragraph 2.12 above cannot be surrendered for 15 days beginning with the day on which the order for his committal is made.

2.15. If an application for habeas corpus is made the fugitive cannot be surrendered until the final determination of the proceedings, including an appeal or an expiration of the time within which the appeal may be brought.

2.16. During the 15 days mentioned in paragraph 2.14 above, or after the final determination of the proceedings mentioned in paragraph 2.15 above, the Minister of Justice and Public Order examines the case further in accordance with articles 6 and 11 of Law 97 of 1970, i.e., inter alia, whether the offence is of a political nature, or whether the fugitive is sought to be prosecuted or detained on account of his race, religion etc, or whether the fugitive is already serving a sentence in Cyprus.

2.17. Where the Minister decides to issue a warrant order to return to the requesting State, notice of the warrant is forthwith given to the fugitive to be extradited there under.

2.18. If a fugitive is not returned to a requesting State

- a) after the expiration of 2 months from the date he could have been returned
- or
- b) after the expiration of one month after the date of issue of the return warrant

he may apply to the Supreme Court for his discharge.

2.19. The fugitive may at any stage waive his rights under the Extradition Law and applicable treaty and consent to his return. In this case the fugitive is surrendered as expeditiously as possible without further proceedings.

### 3 Proceedings concerning requests made by Cyprus

3.1. Extradition requests made by Cyprus for the return of fugitives from abroad originate from the Office of the Attorney General of the Republic or the Police in co-operation with the Office of the Attorney General.

3.2. The Police obtains the warrant of arrest which is always issued by a Court and prepares the documents in co-operation with the Office of the Attorney General and the Ministry of

Justice and Public Order according to the European Convention or other treaty applicable in the case.

- 3.3. The file is then submitted to the Ministry of Justice of the country to which the request is addressed.
- 3.4. A request for provisional arrest is usually made through Police channels.
- 3.5. Arrangements for collecting the fugitive are made by the Ministry of Justice and Public Order.

# **CZECH REPUBLIC**

## **The amendment of the Czech Criminal Procedure Code (not available on Internet)**

### **EXTRADITION PROCEDURE IN THE CZECH REPUBLIC**

In the Czech Republic the extradition procedure is regulated in Sec. 383 - 422 of the Criminal Procedure Code, i. e. Act No. 141/1961 Col. of judicial penal procedure as amended by subsequent regulations.

Since 1993 the Czech Republic is a member State of the European Convention on Extradition of December 13, 1957, Paris. In the relations between the Czech Republic and the States who are not members of this Convention extradition is executed on the basis of bilateral agreements on legal assistance. If there is no treaty basis for extradition between the Czech Republic and another state, the national law permits the possibility of extradition on the principle of mutuality.

#### **I. Procedure of Extradition of a fugitive to Another Country**

Czech extradition procedure is a procedure of mixed type: the Court decides about the permissibility of extradition, i.e. whether the treaty or legal condition of extradition has been completed with. The extradition is permitted or refused by the State administering authority, i.e. the Ministry of Justice. He has the right to refuse extradition even if the Court has decided about its permissibility; however if the Court decides about the impermissibility of extradition, the Minister of Justice is bound by its decision and cannot permit extradition in such a case.

The request for extradition is sent to the Ministry of Justice of the Czech Republic either through diplomatic channels or directly from the Ministry of Justice of the requesting State /which depends on the regulation/.

Having received the request the Ministry of Justice examines, whether the request has all requisites required by the Treaty or the Convention. In the positive case it forwards it to the respective Regional Public Attorney for preliminary investigation. In the negative case it requests the requesting State to supplement the request.

The respective Public Attorney, i.e. a public attorney in whose area the requested person resides or has been detained and taken into provisional custody, having obtained the extradition papers, commences preliminary investigation /not formal, but by the performance of individual acts/.

The purpose of preliminary investigation is to prepare all preliminary data for the decision of the Court, i.e. to ascertain, whether all legal and convention conditions of extradition have been completed with.

If the requested person is not in provisional custody yet, the Regional Public Attorney proposes taking the person concerned into custody; if it is necessary to prevent his/her flight. The decision on such proposal is passed by the head of the penal of the respective Regional Court.

In the framework of preliminary investigation, the State Attorney always examines the person concerned and acquaints him/her with the content of the extradition request. If the person during his/her examination states such circumstances as refute the suspicion and offers proofs thereof, the State attorney is bound to examine these proofs provided they can be examined without undue delay and are really significant for the reasons of suspicion. Otherwise either the State Attorney or subsequently the Court do not examine the reasons of the suspicion and proceed only on the basis of the content of the extradition request and its annexes, unless the examination of the reason for suspicion /on the basis of the proofs submitted by the requesting Party/ is embodied in the treaty /e.g. treaty with U.S.A., U.K. (applicable e. g. in relation to Canada or New Zealand), etc/.

Preliminary investigation is commenced by the State Attorney also on his own initiative, if he has been apprised of a criminal offence for which another country could request extradition. In this case, however, he shall submit his request of the decision on the permissibility of extradition to the court only if the request for extradition has been received additionally.

On the termination of preliminary investigation and the assessment of its result the Regional State Attorney submits his proposal on the permissibility or impermissibility of extradition to the Regional Court.

The Court is not bound by this proposal.

Regional Court decides about the permissibility of extradition in a closed session. It is possible to lodge a complaint against its decision. This complaint is reviewed by the Supreme Court of the Czech Republic.

If the person concerned expresses his/her consent to the extradition, no further formal proceedings are required (unless the State Attorney decides to disregard the person's consent because of existence of some of the grounds for impermissibility of extradition that always apply, such as Czech nationality or asylum granted in the Czech Republic) and the person is handed-over to the officials of the requesting state as soon as the date and place are agreed upon. This procedure is called "simplified extradition".

In practice the fugitive is in provisional custody at the time of receipt of the request for extradition in most cases and remains in this custody till the final decision of the Czech Republic about the permissibility of his/her extradition. However, if the person concerned is still at liberty at the time, when the Minister of Justice grants the extradition (see below), the Court shall take him into custody obligatorily. On the other hand, if the person concerned is in custody at the time of the Court decision and the Court decides that its extradition is impermissible, this person must be released immediately.

After the Court has decided about the permissibility of extradition, the case is submitted to the Minister of Justice. The Minister of Justice is bound by the decision of the Court; if the latter has pronounced impermissibility of extradition he cannot permit extradition in any case.

If the Minister of Justice has any doubt about the correctness of the decision of the Regional Court, he submits it to the Supreme Court of the Czech Republic for review. In relation to the decision of the Supreme Court of the Czech Republic the Minister of Justice decides about extradition in the same way as in relation to the decision of the Regional Court.

If the Minister of Justice has decided about the permissibility of extradition, the provisional custody is changed into the extradition custody (by the decision of the Court).

The requesting State is informed about the decision of the Czech Republic concerning its extradition request without delay and if extradition has been permitted, the information contains also the proposed data and place of hand-over of the extradited person. In the same case the date and place of hand-over is agreed between the police institutions of both States. The escort of the extradited person to the place of hand-over is assured by the Police of the Czech Republic.

The requests for preliminary arrest of a fugitive in the territory of the Czech Republic are sent usually through Interpol and the Director of Criminal Police Service of the Police Presidium of the Czech Republic directly to the Regional State Attorney in the area of which the fugitive is staying. As soon as the Ministry of Justice has been informed that the person concerned has been taken into provisional custody on the basis of the request for preliminary arrest, the Ministry of Justice notifies thereof the requesting State and requests simultaneously the dispatch of extradition materials. The forty days term for the dispatch of the extradition request and its referential must not be exceeded under any circumstances.

## **II. Procedure Requesting Extradition of a Fugitive from another Country**

It is always the Court that has the power to institute extradition proceedings even in the preparatory, i.e. pre-trial procedure; in the latter case, however, only upon the proposal of the State Attorney. The proceeding shall be instituted by the Court that should be or possibly is handling the case. If the case concerns the extradition for the execution of the penalty of imprisonment, the respective Court is the Court which has handled the case in the first instance.

The procedure commences with the issue of a warrant of arrest. According to national law the warrant of arrest contains:

- the personal data of the indicted person, its description and photograph, data on State citizenship,
- legal qualification of the criminal offence, the wording of the respective provisions of the criminal code or of another act, the wording of relevant provisions concerning the limitations, detailed description of the facts of the case.

If the case concerns the extradition for the execution of the penalty of imprisonment, the warrant contains also the name of the Court and the penalty, with the sentence with the legal effect clause annexed.

The warrant for arrest is sent to the Ministry of Justice which assures, in co-operation with the respective Police authorities, the search for the fugitive abroad.

As soon as the Ministry of Justice has received a notification about the arrest of the fugitive in another country, it prepares an extradition request (after it has checked, verified and completed its respective requisites).

In some cases the extradition request is dispatched at the time, when the fugitive has not yet been detained in another country, but reliable data on his/her present stay are available.

The extradition request is sent directly to the Ministry of Justice of the respective State only if a treaty provides so or if both States have agreed on such contacts in another manner /e.g. by the exchange of notes/. In other cases the request must be sent through diplomatic channels. However, diplomatic contacts are not excluded even in case direct contact between the Ministries of Justice has been agreed.

If it is necessary to ensure immediate detention of the fugitive in another country, the respective Court elaborates a request for preliminary arrest. This request, once again, is implemented in accordance with the treaty, and in its absence always through diplomatic channels.

The requested fugitive is taken over in the term and on the place communicated by the respective State by Police authorities that escort the fugitive without delay to the Court that has issued the warrant of arrest and which is bound to examine the delivered fugitive within 48 hours and decide about the custody. In case of extradition for the execution of the penalty of imprisonment the respective Court shall order the delivery of the fugitive to the respective prison. The period spent by the fugitive abroad in prison is included into the penalty of imprisonment to which he has been sentenced by the Czech Court, if it is impossible with regard to the type of imposed penalty. Otherwise this period is taken into account during the determination of the type of penalty and its duration.

## I. Procedure of Extradition from the Czech Republic to Another Country

	Extradition Request	
Embassy of Requesting State in CR		Request for preliminary arrest
Ministry of Foreign Affairs in CR		Interpol
		Directorate of Criminal Police of Police presidium in CR
	Ministry of Justice	Officer Attorney General
	Regional Office of State Attorney	
	- preliminary investigation	
	- proposal of custody	
	Regional Court	
	- decides on custody	
	- decides on permissibility or impermissibility of extradition	Reviews complaints against decision of Regional Court
	- organizes hand-over of fugitive after permission of extradition	
	Minister of Justice	Supreme Court of CR
	- decides definitely about permission or refusal of extradition	- upon Minister's proposal reviews the decision of R.C.

## II. Procedure Requesting Extradition from Another Country

	<u>Information that the person concerned is staying abroad</u>	
in preparatory procedure	in court procedure	in the execution of the penalty of imprisonment
State's Attorney proposal of the issue of a warrant for arrest	The Court issues a warrant of arrest	
Office of Attorney General is informed about the proposal	Ministry of Justice	Directorate of Criminal Police - Service of Police Presidium of CR
	- requests search abroad and/or preliminary arrest	
	- submits extradition requests	
through diplomatic channel		to the Ministry of Justice of requested State

# DENMARK

## EXTRADITION PROCEDURES IN DENMARK

### I. EXTRADITION FOR THE PURPOSE OF PROSECUTION

(i) Magistrates' Courts (right of appeal), police (maybe Public Prosecutor, Chief Public Prosecutor), Ministry of Justice and possibly the Ministry of Foreign Affairs.

(ii) (a) The police ask the Magistrates' Court for a committal order in absentia concerning the person to be extradited. Counsel is appointed for the person concerned. When a committal order is made available, the police send the committal order accompanied by a statement of the circumstances of the case, etc. - perhaps via the competent Public Prosecutor - to the Ministry of Justice, requesting the Ministry of Justice to submit a request for extradition to the country concerned. At the same time, the police initiate a search for the fugitive via Interpol. The Ministry of Justice considers whether the material available from the police may form the basis of a request for extradition of the person concerned and, in that event, a request is sent to the competent authorities.

(b) The Ministry of Justice receives the request for extradition either directly from the foreign authorities or via the Ministry of Foreign Affairs. The Ministry of Justice sends the case to the competent Chief Constable, requesting the Chief Constable to investigate whether the conditions of extradition have been fulfilled. The investigation takes place in compliance with the provisions of the Administration of Justice Act, including the provisions in respect of arrest, etc. Counsel is appointed for the fugitive. The person to be extradited will normally be interrogated for the prosecution statement, possibly in court.

Upon completion of the police investigation, the question of extradition is submitted to the Ministry of Justice for decision - normally via the Public Prosecutor.

The police inform the fugitive of the decision of the Ministry of Justice and he/she may - within three days of the date on which the decision was brought to his notice - request the police to bring the question on the lawfulness of the decision before the Magistrates' Court. An appeal may be made against the decision of the Magistrates' Court to the High Court. The decision of the Ministry of Justice on extradition is then communicated to the requesting country, and the practical arrangements in connection with the transfer are made with the police.

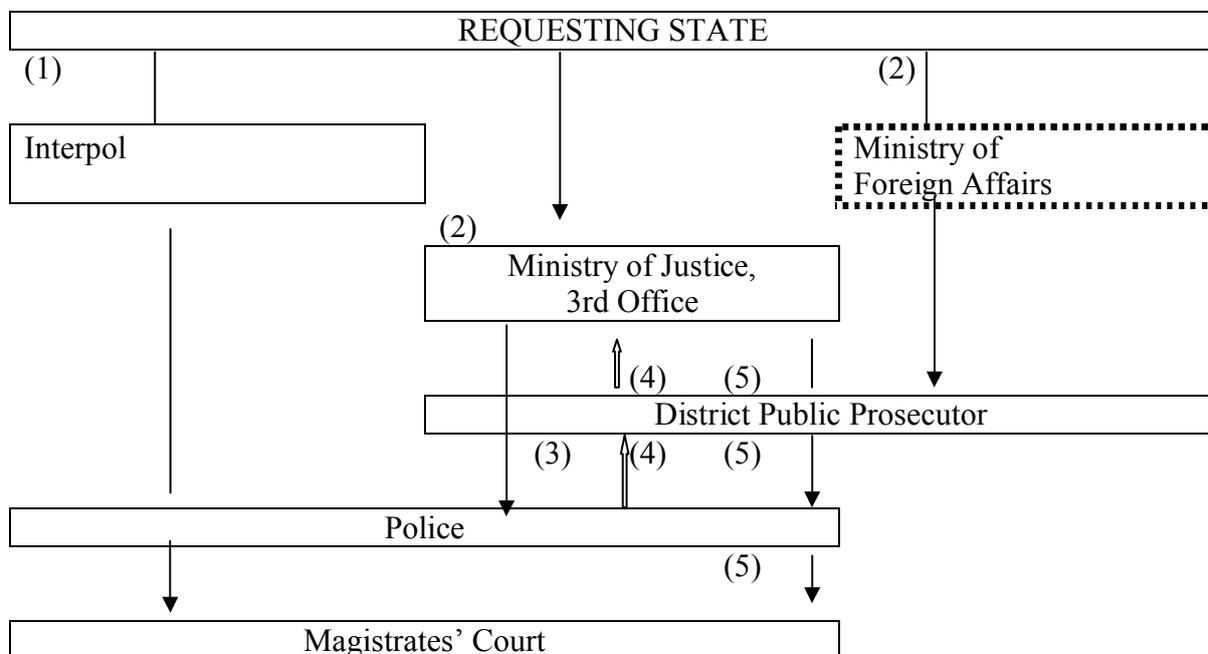
(iii) The procedure in Denmark is not formalistic. The assessment of evidence in court is discretionary. It is, however, imperative that reliable information on the identity of the fugitive is available.

**II. EXTRADITION FOR THE PURPOSE OF EXECUTION OF A SENTENCE**

Denmark has only a few cases of this nature, and the procedure is similar to that applicable to the above-mentioned cases. In these situations, however, the issue will also be submitted to the relevant prison where the person concerned is serving his sentence.

**I. REQUEST FOR EXTRADITION FROM DENMARK BY  
EC MEMBER STATES  
(for the purpose of prosecution)**

**TYPICAL PATH**



1) The requesting state's police may decide to ask the police via Interpol for provisional arrest. In this case, the police will arrest the fugitive and bring him before a court in order to get a warrant of arrest. The fugitive is remanded in custody for up to 30 days, but under special circumstances the period of custody may be extended.

(2) The formal request is forwarded to the Ministry of Justice, 3. Office, either directly or via the Ministry of Foreign Affairs. It is imperative, that reliable information on the identity of the fugitive is available. Documentation must be provided in accordance with the European Convention on Extradition.

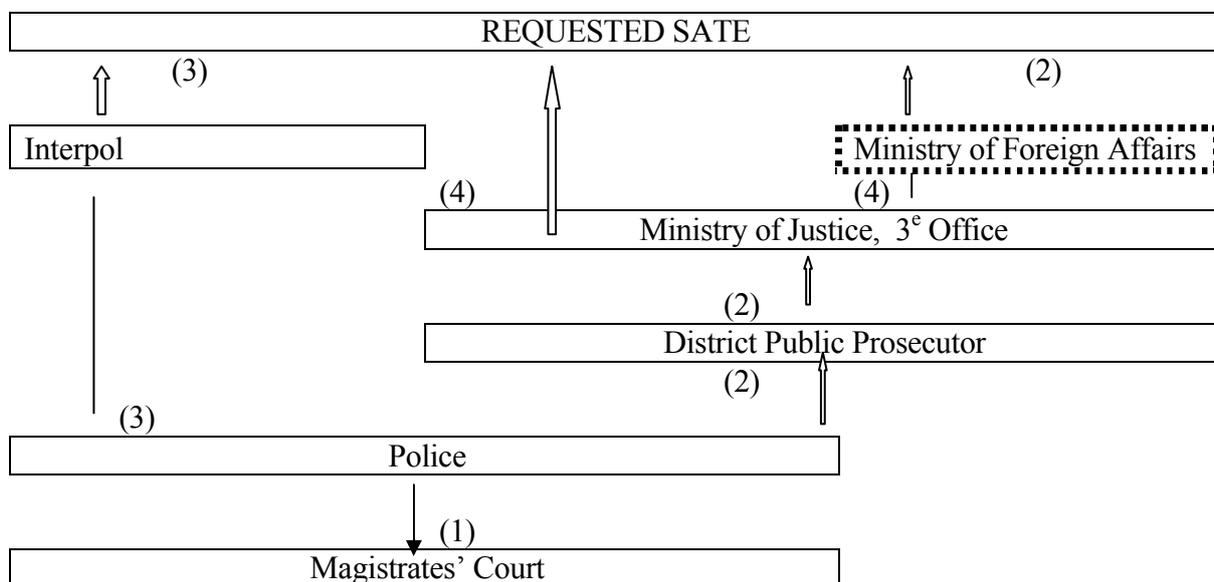
(3) The Ministry of Justice sends the case to the competent Chief Constable, requesting the Chief Constable to investigate whether the conditions of extradition are fulfilled. The investigation takes place in compliance with the provisions in respect of arrest, etc. Counsel is appointed for the fugitive. The fugitive will normally be interrogated for the prosecution statement, possibly in court.

(4) Upon completion of the police investigation, the question of extradition is submitted - via the Public Prosecutor - to the Ministry of Justice for decision.

(5) The police inform the fugitive of the decision of the Ministry of Justice, and that person may - within three days of the date on which the decision was brought to his notice - request the police to bring the question of the lawfulness of the decision before the Magistrates' Court. An appeal may be made against the decision of the Magistrates' Court to the High Court. The decision of the Ministry of Justice on extradition is then communicated to the requesting country, and the practical arrangements in connection with the transfer are made with the police.

**II. REQUEST FOR EXTRADITION FROM  
EC MEMBER STATES BY DENMARK  
(for the purpose of prosecution)**

**TYPICAL PATH**



- 1) The police ask the Magistrates' Court for a committal order in absentia concerning the person to be extradited.
- 2) When a committal order is made available, the police send the committal order accompanied by a statement of the circumstances of the case, etc. - via the competent Public Prosecutor - to the Ministry of Justice, requesting the Ministry of Justice to submit a request for extradition to the country concerned.
- 3) At the same time, the police normally initiate a search for the fugitive via Interpol.
- 4) The Ministry of Justice considers whether the material available from the police may form the basis of a request for extradition of the person concerned and, in this case, a request is sent to the competent authorities of the requested State, either directly or via the Ministry of Foreign Affairs.

**ESTONIA**

(Not available on Internet)



## **FINLAND**

Extradition, Tools, Finland

30.5.2012

### **Request for extradition made to Finland by a foreign State**

#### Introduction

The Finnish Extradition Act (456/1970) was drafted at the same time as Finland was about to ratify the European Convention on Extradition (ETS 024). Thus, the contents and procedures of the internal legislation on extradition are quite similar to those of the European Convention. Finland has also ratified the Second Additional Protocol to the European Convention on Extradition (ETS 98). In addition, Finland has signed bilateral extradition agreements with *inter alia* Australia, the United States of America and Canada.

The Finnish legislation on extradition is open in the extradition also is possible to a state which has not signed an extradition treaty with Finland. In such a case the prerequisite for extradition is, however, that the request for extradition is based either on an enforceable sentence, with which the person whose extradition is requested has been convicted on the basis of adequate evidence for the offence referred to in the request, or on a warrant of arrest, issued by the appropriate authority of the foreign state and based on evidence indicating the probable guilt for the offence of the person concerned.

Surrender between the Member States of the European Union is based on European Arrest Warrant (EAW) and surrender between the Nordic States is based on Nordic Arrest Warrant (NAW).

Finnish nationals may not be extradited. Surrender is possible within the confines of the EAW and NAW. In the context of the European Convention of extradition the terms 'national' includes on the part of Finland nationals of Finland, Iceland, Norway, Sweden and Denmark, and aliens permanently residing in these countries.

#### Request for Extradition

The procedure of extradition begins either with request presented through police channels (Interpol) for the provisional arrest of a fugitive, or with a formal request submitted through the diplomatic channel, or directly sent to the Ministry of Justice (this option is open to parties of the Second Additional Protocol).

The official languages of Finland are Finnish and Swedish.

## Provisional Arrest

After the person whose extradition is requested has been taken into custody by the police - the district court, the public prosecutor and the Ministry of Justice have to immediately be informed of this. The district court then urgently considers whether the measure shall remain in effect. The person in custody always has right to have the matter reviewed by a court within two weeks of the request.

The Ministry of Justice informs the authorities of the requesting state of the provisional arrest, and sets a limit for the presentation of a formal request for extradition. [The Ministry welcomes all advance information on the person whose extradition is requested, and on the legal documents supporting the request, so that it may ensure the detention of the person until a formal request has been submitted]

## Decision on Extradition

The Ministry of Justice decides whether extradition is granted. If the documents accompanying the request clearly indicate that extradition cannot be granted under the Act, the request is immediately rejected. Otherwise the documents are sent to the National Bureau of Investigation which conducts an investigation into the matter. The police draws an investigation report which contains the opinion of the suspect on the request for extradition. An advocate is paid from public funds assists the person during the investigation.

If the person whose extradition is requested before the decision has been made declares that he/she opposes extradition or that no legal grounds exist for extradition, the Ministry of Justice has to obtain the opinion of the Supreme Court. The person has to be informed of this legal remedy. The Ministry of Justice may also seek the opinion of the Supreme Court on its own initiative. If the Supreme Court deems that no legal grounds exist for extradition, the Ministry of Justice has to reject for extradition and order the person detained to be released. If there are no legal impediments to the extradition, the Ministry of Justice can decide the matter in accordance with the international obligation of Finland.

## Impediments to Extradition

The Finnish Extradition Act forbids extradition for military or political offences. Extradition is also refused if there is reason to believe that the person whose extradition is requested will be in peril of persecution against his life or liberty or of other persecution because of his race, nationality, religion, political opinions or membership in a community, or due to the political situation. As Finland acceded to the European Convention it reserved itself the right of refusing extradition if it would be unreasonable for humanitarian reasons of the age, health or other personal circumstances of the person concerned, or in view of special condition.

## Rule of Speciality

When extradition is granted Finland applies the rule of speciality in Article 14 of the European Convention on Extradition.

The requesting state is formally informed of the extradition through the same channel as the request was presented and through Interpol channels.

# FRANCE

## EXTRADITION PROCEDURES IN FRANCE

France has been a member of the European Convention on Extradition since 1986. Today, the Convention applies to all the Member States of the European Community, with the exception of Belgium, with which France has a bilateral convention which dates from 15 August 1874.

In addition, France has concluded a number of bilateral conventions, in particular with countries in Europe, Africa and America.

The National Law of 10 March 1927 permits extradition, on a reciprocal basis, without any treaty having been signed, and this facility is frequently used.

Extradition requests are sent to the Ministry of Justice, the Department of European and International Affairs by the Bureau of International Criminal Law and Mutual Legal Assistance. Three magistrates are responsible for this. The Judicial Conventions Division is the department responsible for French nationals abroad at the Ministry of Foreign Affairs ensures the safe transmission of extradition requests through diplomatic channels and, if necessary, liaises with embassies.

### **A. PASSIVE EXTRADITION PROCEDURE**

In France extradition involves an administrative and a judicial procedure.

A request for extradition is initiated through diplomatic channels. It must contain legal documents (arrest warrants or written evidence that a sentence has been passed), copies of any relevant documents and a résumé of the details relating to the person whose extradition is requested.

The file is sent by the Ministry of Justice and, if at this stage it seems unlikely that the extradition request would be refused outright, it goes to the General Public Prosecutor's Office (Court of Appeal) within whose jurisdiction it falls; so that the person whose extradition is being sought by the Public Prosecutor of the Republic (Court/Tribunal) may be arrested and imprisoned prior to extradition.

After the case has been heard by the Public Prosecutor who informs the fugitive of the extradition request, the latter appears in person before the Chamber for the Prosecution of the Court of Appeal with the assistance of a lawyer and an interpreter. The fugitive has the option of agreeing to extradition at this stage.

If the fugitive agrees to extradition, the requesting State is notified and the transfer is arranged.

If the person refuses to agree to extradition, the Chamber for the Prosecution issues an authority to proceed:

- This authority to proceed is deemed to be invalid if the conditions for extradition are not fulfilled. The Government cannot then, under any circumstances, continue with the extradition, and the person whose extradition was sought must be released immediately. The requesting State is informed of this.

- this authority to proceed is deemed to be valid (or partially so) if there is nothing to oppose the extradition. It may mean an appeal in abeyance or cassation based uniquely on formalities and available exclusively to the person concerned. It is not binding upon the Government which has the choice whether or not to extradite. If the Government decides to proceed with the extradition, the Keeper of the Seal (French Minister of Justice) submits a detailed and justified extradition order to the Prime Minister for signature which, in turn may be subject to an appeal or annulment before the Council of State; the Ministry of Justice will recognise this as being suspended, whether or not it is accompanied by a formal request for suspension of the order.

In the absence of an appeal, or if the latter is overruled, extradition proceedings go ahead. However, if the order is annulled, the person due to be extradited is immediately released.

The Government may also elect not to follow the Council's advice and refuse the extradition request and release the person due to be extradited. Such a decision takes immediate effect.

The requesting State is always informed of the outcome of their request.

The extradition may be postponed in cases where the person due to be extradited is being sought by the police, or is serving a sentence under French law. It is nevertheless statutory that the request should be dealt with as quickly as possible and the transfer effected as soon as the fugitive has completed his or her sentence in accordance with French law.

In France, and in almost all of the other EC States, the length of sentence served during the extradition procedure is deducted from the prison sentence to be served after extradition.

In urgent cases, the fugitive may be put under provisional arrest prior to the official extradition request through diplomatic channels. A request for provisional arrest must be made in writing and, in practice, this is usually carried out via Interpol.

In order to prevent the escape of the fugitive, provisional arrest is adopted in the majority of cases. Similarly, a time limit is fixed for the transmission of the request for extradition and this varies according to the various Conventions. For example, the timescale envisaged by the European Convention on Extradition is 40 days, and when this expires the person involved must be released in accordance with the legal requirements of the Court of Cassation.

On the other hand, release after an initial period of 18 days is optional, but France does not make use of this option.

Release for any other reason is possible at any stage in the proceedings from the day of arrest to the day of surrender, and this lies within the competence of the Chamber for the Prosecution.

In cases where political crimes have been committed, a refusal to extradite is generally obligatory (see the European Convention on Extradition). There is no precise definition of political offences in the Conventions, the precise political nature of the offence is interpreted in the light of the national law of the requested State. In its communiqué of 10 November 1987, the Government defined French policy on extradition. Emphasising the importance attached by France to asylum rights, it ruled that requests for extradition may be carried out in accordance with the following four criteria, each of which may constitute a valid reason to refuse extradition:

- the character of the political and judicial system of the requesting State;
- the political nature of the offence;
- the political motive of the request for extradition;
- if extradition would aggravate the situation of the fugitive due to his or her actions, political opinions, race or religion.

At the same time, the political nature of the offence will not be taken into consideration when it has been committed in a State which respects basic human rights and the freedom of the individual, nor when the offence is of such a criminal nature that the alleged political nature of the offence could not justify the use of unacceptable methods.

In cases where the fugitive does not consent to extradition, the complexity of the procedure inevitably means that the process of dealing with extradition cases is often protracted. But this is inevitable and reflects the need for a detailed judicial and administrative examination of requests, and is also due to the existence of the appeal procedure.

However, on request, France keeps the requesting State informed of the arrest position of the case.

## **I Necessary information/documentation**

### **a) Provisional arrest**

- 1) Proof of identity:
  - Name and surname of the fugitive;
  - Date and place of birth;
  - Nationality.

## 2) Basis upon which extradition is being sought

Fugitive subject of an arrest warrant:

- date
- name of the court which issued the warrant
- legal details, offences and documentation

Fugitive required to carry out a sentence:

- total/overall sentence
- remainder of sentence to be completed
- decision of the court
- nature of sentence (conflicting or not, definite or not)

## 3) Résumé of facts

France allows a time limit of 40 days for the transmission of relevant legal documents with the exception of requests coming from Belgium; in the case of Belgium, the time limit is 21 days when referring to the period of notification, not referral or complaint.

**b) Extradition request**

The necessary documents are those laid down in the European Convention on Extradition (or in the Franco-Belgian Convention).

With regard to this it is necessary to remember that there should be measures relating to the order.

**II The main difficulties encountered**

## 1) Tax fraud and customs offences

In the case of tax and customs offences France has a requirement regarding the provisions of Article 5 of the European Convention on Extradition, namely that the information envisaged by this Article must be provided in each case and not for each category of offence committed.

## 2) Refugee status

France is not permitted to extradite a person who holds refugee status if the requesting State will not guarantee not to return the fugitive to his country of origin under any terms or conditions.

## 3) Translation of documents

France has one requirement as regards the translation of documents: all documents sent in support of an extradition request must be translated into French.

## 4) Statutory Limitation

France has a statutory limitation which prescribes that a court action must be brought within three years for lesser offences; ten years for serious crime and drug trafficking, and another statutory limitation which prescribes sentences of five years for lesser offences; twenty years for serious crime and drug trafficking.

## 5) Duration of imprisonment prior to extradition

On surrender, it is essential to know, as soon as possible, the period of detention the extradited person was held.

## 6) Extension of the period of detention to enable extradition

If there is a request to extend the period of detention to enable extradition, the appropriate legal documents must be produced and these must include the detainee's statement which must indicate whether or not he consents to the extension.

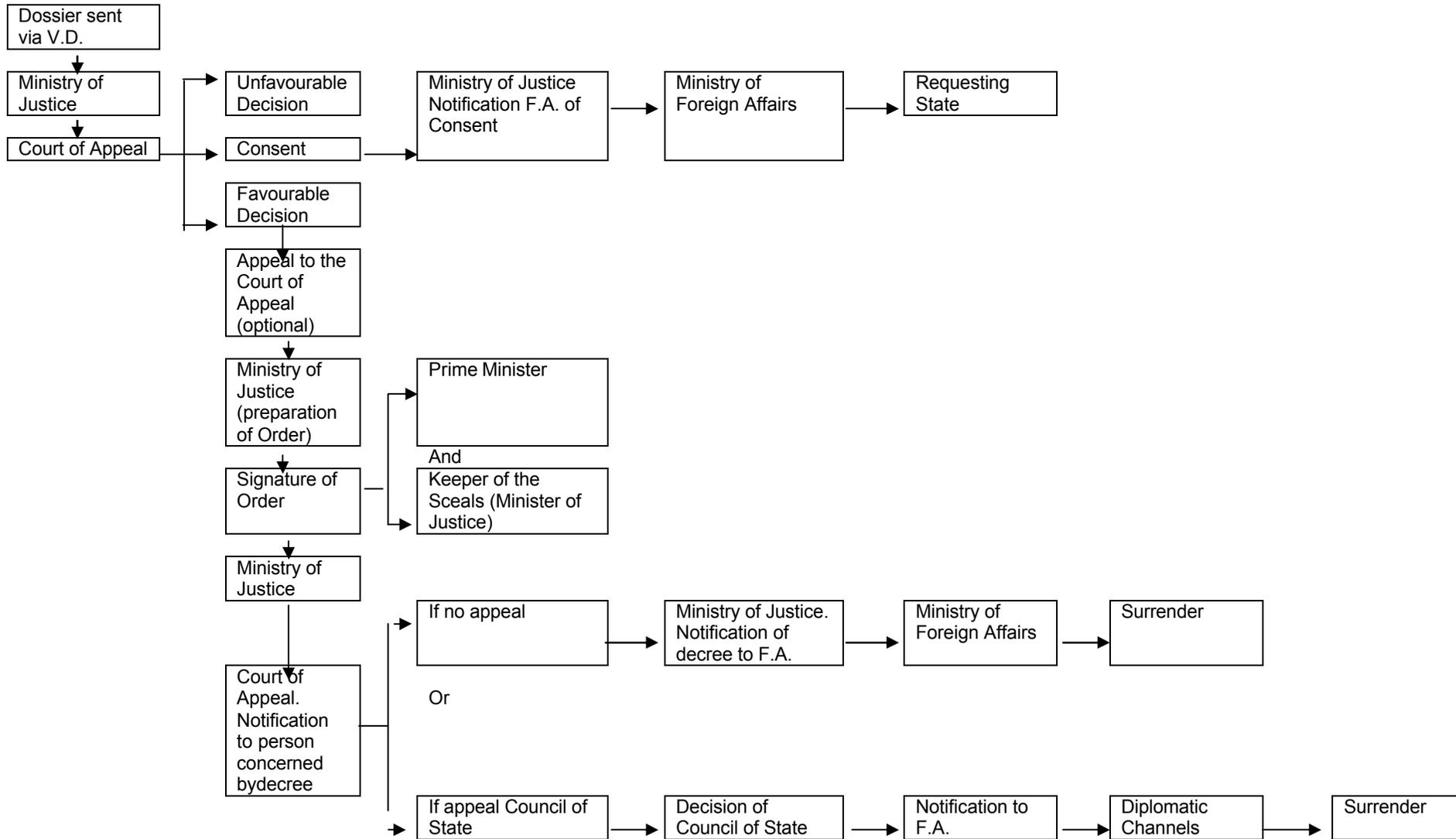
If the fugitive does not agree to the extension he must be notified a) of the order of the Chamber for the Prosecution which gives a judgment supporting the request for an extension, and b) the court order granting extradition. Only when the appropriate legal documentation to accompany these formalities is complete may the French Government inform the requesting State that the request for an extension has been granted.

## 7) Death sentence

France has ratified Treaty No. 6 of the European Convention on Human Rights and does not agree to extradition without having been given a prior guarantee that a death sentence will not be carried out on the person whose extradition is requested.

# EXTRADITION PROCEDURES in FRANCE

D.C. = Diplomatic Channels– F.A.. = Foreign Affairs



# **GERMANY**

## **EXTRADITION PROCEDURES IN GERMANY**

### **I. AUTHORITIES ASSOCIATED WITH EXTRADITION PROCEDURES**

1. The following authorities can be associated with a request for extradition from Germany:

- Federal Office of Justice
- Federal Ministry of Justice
- Foreign Office
- Bundeskriminalamt (Federal Criminal Bureau), Wiesbaden the national Interpol office
- Embassy of the Federal Republic of Germany in the requested State
- Regional Ministry of Justice of a regional state making the extradition request
- The Public Prosecutor with local jurisdiction at the Higher Regional Court described as the Chief Public Prosecutor
- The Public Prosecutor with local jurisdiction
- A court (local, Regional State, or Higher Regional Court).

2. The following authorities can be associated with a request for extradition made to Germany:

- Federal Office of Justice
- Federal Ministry of Justice
- Foreign Office
- Bundeskriminalamt (Federal Criminal Bureau) the national Interpol office
- Regional Ministry of Justice of the regional state associated with the extradition request
- The Higher Regional Court
- The Public Prosecutor of the Higher Regional Court, who is described as the Chief Public Prosecutor
- A District Court
- A Public Prosecutor.

### **II.**

1. A typical path through the authorities for an outgoing extradition request

a) Request via the diplomatic channel:

- The Public Prosecutor initiates a request,
- The Chief Public Prosecutor checks the request and forwards it to,
- The Ministry of Justice of the regional state checks it and forwards it to,
  
- The Federal Office of Justice decides, in conjunction with the Foreign Office and other federal ministries whose jurisdiction may be affected (eg. Federal Ministry of Finance for fiscal crimes) on making the request.
  
- The Foreign Office passes the request to the Ministry of Foreign Affairs via the German Embassy in the requesting State.

b) Extradition requests via the Ministry of Justice:

- The Public Prosecutor initiates a request;
- The Chief Public Prosecutor checks the intended request and passes it on;
- The Ministry of Justice of the regional state decides on the placing of the request and passes it on to the Ministry of Justice of the requested State.

2. Typical path through the authorities for an incoming extradition request

a) Request via the diplomatic channel:

- The Foreign Office accepts the foreign request and passes it on;
  
- The Federal Office of Justice checks the request for obvious shortfalls and completeness of documentation and passes it on;
  
- The Regional Ministry of Justice of the regional state passes it on;
  
- The Chief Public Prosecutor applies to the Higher Regional Court for a decision on the making of an extradition order custody and admissibility of the extradition;
  
- The Higher Regional Court decides on the order for extradition custody and admissibility of extradition;
  
- The Chief Public Prosecutor passes the decision to the Higher Regional Court together with his own assent;
  
- The Ministry of Justice of the regional state passes on the decision of the Higher Regional Court and the assent of the Chief Public Prosecutor;
  
- The Federal Office of Justice, in conjunction with the Foreign Office and other federal ministries whose jurisdiction the extradition affects, decides whether or not to grant extradition;
  
- The Foreign Office passes the decision of the Federal Government to the foreign Embassy.

b) Extradition requests from countries with which the path via the Ministry of Justice has been agreed for the transmission of requests:

- The Ministry of Justice of the regional state accepts the request for extradition from a - Foreign Ministry of Justice;
- The Chief Public Prosecutor applies for an extradition custody order and asks for a decision on whether or not the extradition is admissible;
- The Higher Regional Court decides on the application for an extradition custody order and makes a judgment on whether or not the extradition is admissible;
- The Chief Public Prosecutor endorses the decision of the Higher Regional Court with his own assent and passes it on;
- The Ministry of Justice of the regional state decides whether or not to grant the extradition and passes the decision to the foreign Ministry of Justice.

### 3. Explanations

The incoming and outgoing extradition requests are decided by the Federal Office of Justice in conjunction with the Foreign Office and other federal ministries whose jurisdiction the extradition affects in accordance with the law. As in most cases the extradition traffic with foreign countries prescribes diplomatic channels, a transfer of jurisdiction within the Federal Republic to a different body would not imply any acceleration of the process. However the extradition traffic with foreign countries with which the path via the Ministry of Justice has been agreed for the transmission of requests works differently. In those cases the Federal Government has transferred its rights to decide on incoming requests and the making of requests to the governments of the federal states. Excluded from this arrangement however, are particular cases where the extradition is requested by more than one foreign state; or where the offence for which the extradition is being sought is of a political nature or one connected with a military act. In these exceptional circumstances - as in others - the decision lies with the Federal Government.

Requests from EU member states by a European Arrest Warrant are transmitted directly to the competent general prosecutor's office. They may be sent via SIS channel.

### III. PECULIARITIES IN THE GERMAN EXTRADITION LAW AND EXTRADITION ARRANGEMENTS

Mutual legal assistance between foreign countries in prosecution matters including that of extradition is governed by the Law on Mutual Legal Assistance (IRG) dated 23 December 1982. Regulations relating to internal law agreements - such as the European Agreement on Extradition dated 13 December 1957 - do take precedence over these laws. However the interstate procedure of extradition and the preliminary extradition custody are solely governed by the IRG.

1. The formal extradition procedure consists of
  - the procedure whereby it is determined whether the extradition is legally possible and the subsequent
  - authorisation procedure

Following an application by the Chief Public Prosecutor the Higher Regional Court with local jurisdiction decides whether the extradition applied for by a foreign state is admissible. Within the judicial procedure the extradition is verified and the protection in law of the prosecuted person ensured. The Higher Regional Court must establish that the prerequisites of an extradition are given by the foreign request (especially mutuality, mutual criminality, observance of minimum sanction limits, observance of the speciality rule) and that there are no hindrances to an extradition. Possible impediments to an extradition are the German nationality of the person prosecuted, a political or military nature to the offence forming the basis of the request, an offence against the principle "ne bis in idem", the risk of the death penalty or political prosecution.

If the Higher Regional Court rejects the request, extradition is rendered impossible. In all other cases the competent authority, eg. the Federal Office of Justice or the Ministry of Justice of the regional state with appropriate jurisdiction makes the final decision on extradition following the procedure which ascertains whether the extradition is admissible.

2. The procedure for a simplified extradition represents a deviation from the formal procedure. If the fugitive has agreed to the extradition in a statement to the District Court, the extradition can, on the instruction of the Federal Office of Justice or the Minister of Justice of the regional state with appropriate jurisdiction, take place without presentation of extradition documentation and without the need to establish whether the extradition is admissible by the Higher Regional Court. Although the speciality rule must be observed the person concerned may waive his right of a judicial protocol. The fugitive is advised during the hearing of the application by the Chief Public Prosecutor of the possibility of the simplified extradition and the waiving of the speciality rule and their effect.

3. The agreement of the fugitive to the simplified extradition procedure and his waiving of the speciality rule are irrevocable.

The extradition under the simplified procedure can be granted and executed on the basis of a simple arrest warrant by the foreign authority with appropriate jurisdiction, for which neither a formal substantiated extradition request, nor the submission of extradition documentation are pre-requisites. The only formal requirement is that the Higher Regional Court orders the preliminary extradition custody against the fugitive on the basis of a summary examination.

4. The jurisdiction for ordering a preliminary extradition custody, the extradition custody after the arrival of extradition documentation as well as the custody for the purpose of carrying out the extradition are solely the responsibility of the Higher Regional Court with local jurisdiction. Appropriate applications are made by the local Chief Public Prosecutor.

#### **IV. PRACTICAL PROBLEMS WITH EXTRADITIONS**

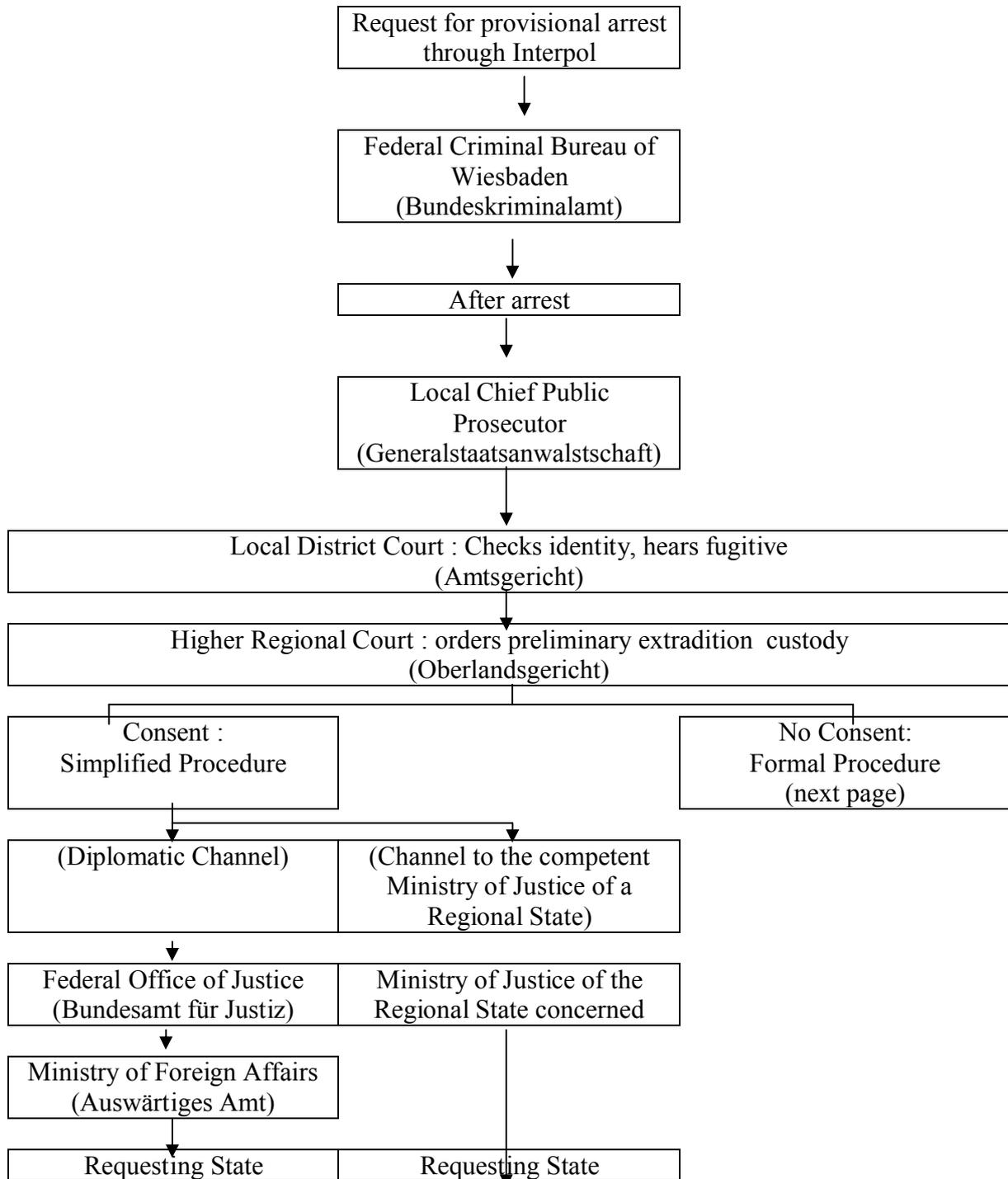
1. In several states the extradition procedure and extradition custody connected with this process are disproportionately long. Sometimes this procedure takes at least a year. For this reason in many cases the extradition request cannot go ahead with some Member States because of the principle of appropriateness which must be observed.

This also leads to the circumstance that in a future European Information System - such as the agreed Schengen Information System - no uniform investigative data base can be collated. As several states must be excluded from the investigative area due to their inordinately lengthy extradition procedures yet requests in a future European system - ditto in the Schengen Information System - are only possible on a uniform basis, such cases would have to be excluded from a simplified search procedure right from the outset.

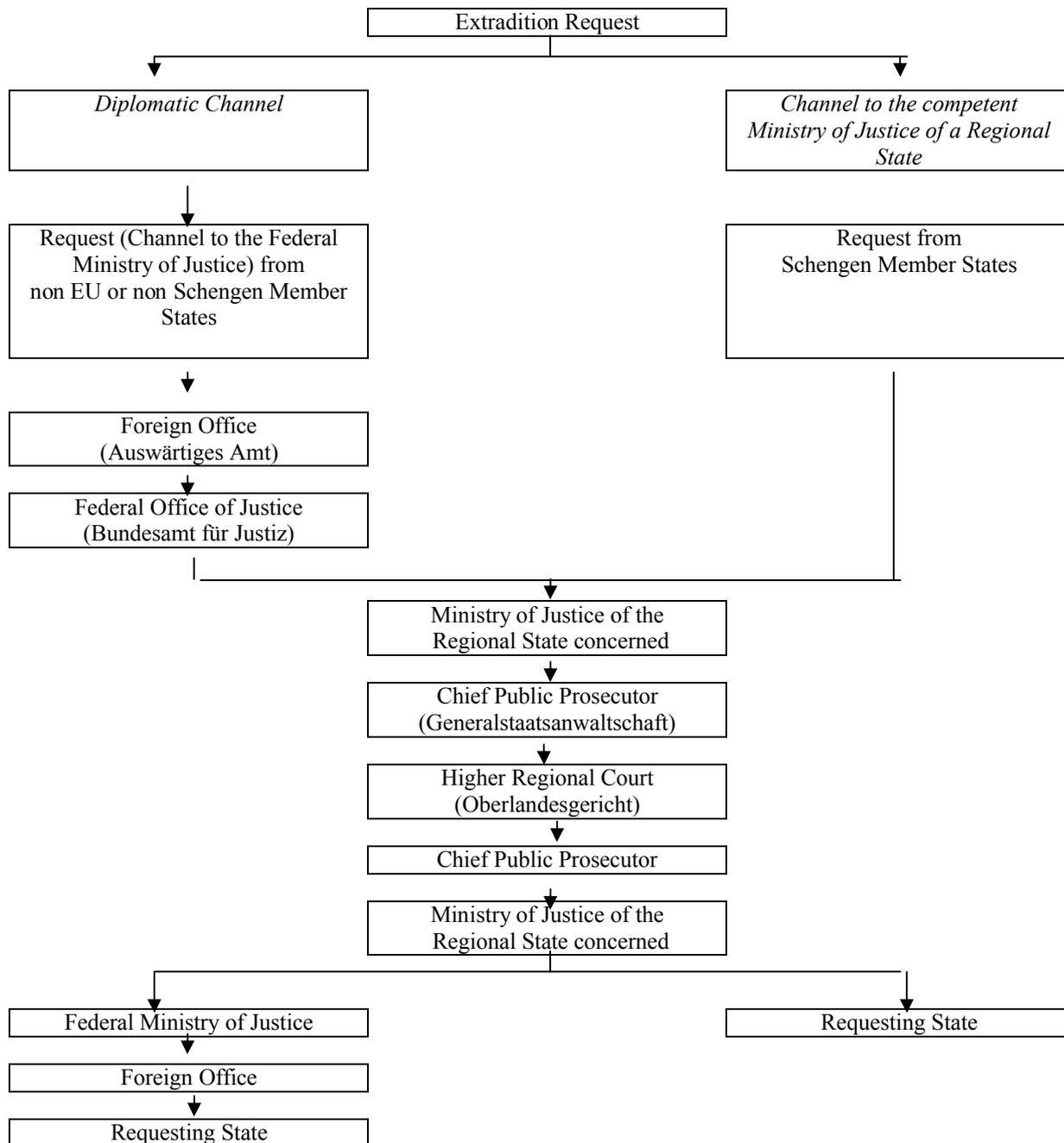
2. In many cases, incoming extradition requests in order to expedite a judgment made in absentia cannot be granted without difficulty. Such judgments in absentia are unknown in German law. An extradition to enforce a foreign judgment in absentia would only be permissible if it does not contravene essential principles of German law. The decision of German authorities could be made easier if the requesting state could explain from the outset that the requirements for an extradition are provided according to the regulations of Article 3 of the 2nd Additional Protocol on the European Convention on Extradition. It would be sufficient to provide details in the extradition requests:

- either on the legal requirements on the summoning of fugitives, his opportunity to defend himself and have legal representation in connection with judgments made in absentia as well as the actual handling of these regulations in the concrete case, or
- the opportunity to legal representation after the extradition which would ensure the possibility of a judicial review of the facts and legal aspects.

**PROVISIONAL ARREST AND SIMPLIFIED EXTRADITION PROCEDURE IN GERMANY  
TYPICAL PATH**



**FORMAL EXTRADITION PROCEDURE IN GERMANY  
AFTER REQUEST BY EC MEMBER STATE**





## **GREECE**

### **EXTRADITION PROCEDURES IN GREECE**

1. The purpose of this brief work is to offer some useful information about extradition procedures in Greece.

Greece has ratified the European Convention on Extradition and is also bound by bilateral extradition treaties with several other countries.

2. As we know, there are two types of extradition requests:

a) Where the fugitive is wanted by a foreign State for an offence committed within the State's jurisdiction; and

b) Where the fugitive's return is required from a foreign State to stand trial, or for the execution of the imposed sentence.

The same principles usually apply in each case and the whole procedure is provided in detail in our Code of Criminal Procedure.

It should be noted that we do not extradite our nationals and we apply the active personality principle, the passive nationality principle and, for some criminal acts, the universality principle.

3. When Greece is the requesting State, the request for extradition is submitted by the Public Prosecutor at the Court of Appeal, with all the supporting documents, to the Minister of Justice in order for it to be forwarded through the Minister of Foreign Affairs to the requested State. But in urgent cases, the Public Prosecutor at the Court of Appeal may request the provisional arrest of the fugitive directly from the judicial authorities of the requested State when he believes that the fugitive is likely to flee the country.

I think that it is necessary to mention that the request is submitted by the Public Prosecutor at the Court of Appeal in the district where the extraditable crime has been committed. In Greece there are twelve Courts of Appeal.

4. When Greece is the requested State, the extradition procedures are based on dual concept. The extradition request is first assessed by the Court of Appeal which renders a decision effective on the domestic level on whether or not the extradition is admissible. The internationally valid and binding decision is taken by the Minister of Justice, who is required to reject any application for extradition if the Court has declared that the extradition is inadmissible.

5. In extradition procedures, when Greece is the requested State, the competent Court of Appeal evaluates the documents submitted in the light of the applicable extradition agreement and, in the absence of a treaty, in the light of the domestic Law.

The requesting State has no standing in the judicial proceedings of the requested State and is represented by the Public Prosecutor at the Court of Appeal.

6. When Greece is the requested State the formal procedures are as follows:

a) As soon as the Minister of Justice receives the extradition request with the supporting documents from the Minister of Foreign Affairs, the file is passed to the President of the Court of Appeal through the Court's Public Prosecutor.

b) On receipt of the request, the above mentioned President is obliged to issue a warrant of arrest for the fugitive.

c) The Public Prosecutor at the Court of Appeal can also issue a provisional arrest warrant in a really urgent case, even before the formal extradition request is made, in order to prevent the fugitive from fleeing the country.

d) Following a warrant and the arrest, a fugitive shall be brought immediately before the competent Public Prosecutor at the Court of Appeal who, after establishing the identity of the accused and after the examination of the regularity of the documents, orders the fugitive to be detained in prison until the trial of his case which usually takes place after a few days if there is no need for supplementary information by the requesting State.

e) The Court of Appeal which is composed of three members, examines the extradition case in public, and the fugitive has the right to have a lawyer and an interpreter if he does not know the Greek language.

f) If the extradition documents are not sufficient to make a judgment on the granting of the extradition request, the Court shall render a decision only after the requesting State has been given an opportunity to submit additional documents.

The Public Prosecutor must be present at the oral hearing.

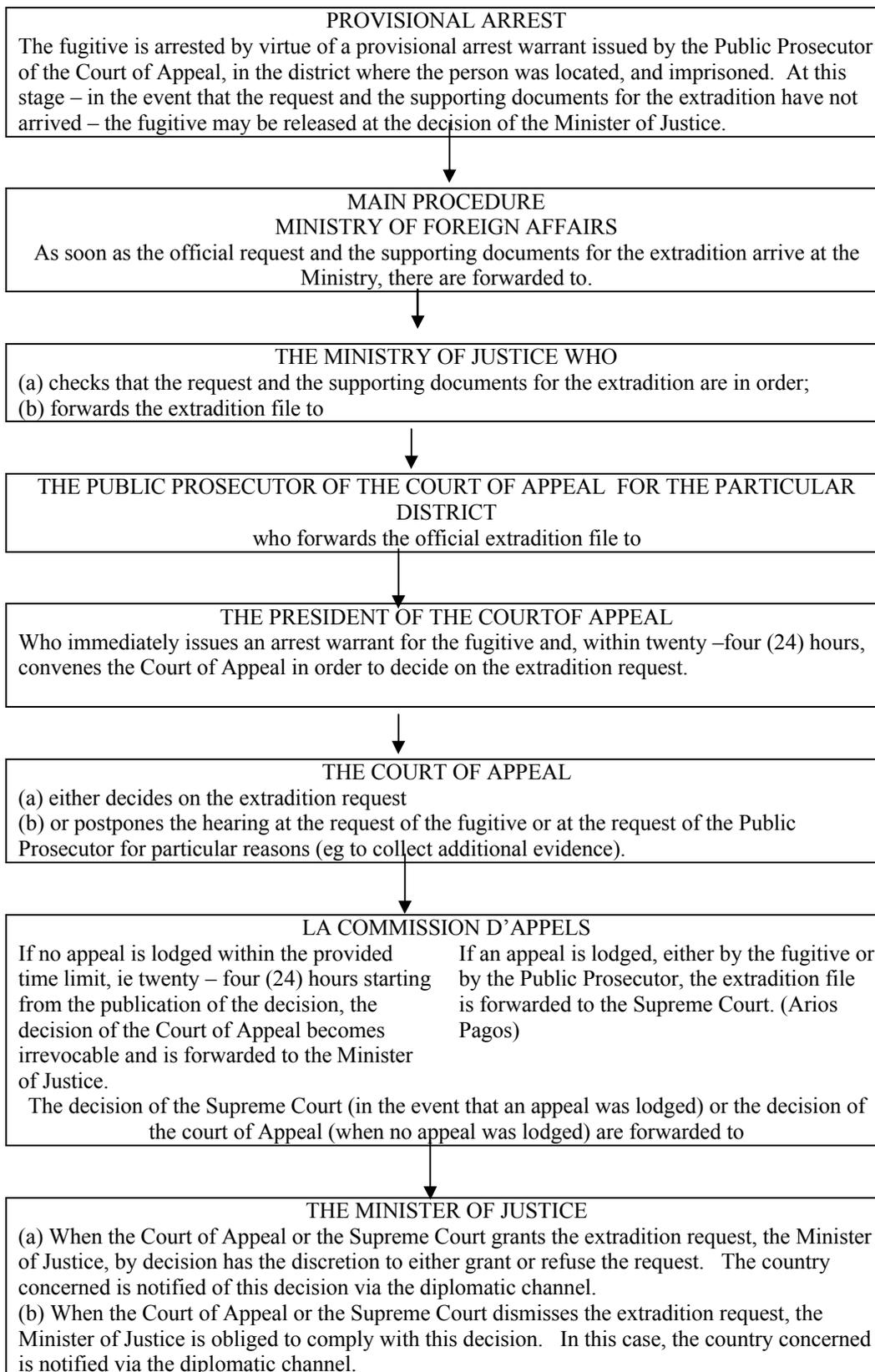
g) Reasons must be given for the decision regarding the granting of the extradition request, and the Public Prosecutor of the above mentioned Court and also the accused have the right to submit an appeal within 24 hours.

The appeal is examined by the five members of the Supreme Court and after the decision regarding the granting of the extradition request, the file is transmitted to the Minister of Justice who has the discretionary power whether or not to accept the decision of the Court.

But, in the event that the Court finally decides that there are no grounds for extradition, the Minister of Justice cannot order the extradition.

I think it is also useful to add that, in Greece, we do not apply the procedure of simplified extradition even though the fugitive consents to be extradited and does not raise any objections to his extradition.

## EXTRADITION PROCEDURES IN GREECE FOLLOWING A REQUEST BY FOREIGN AUTHORITIES



## HUNGARY

### Extradition from Hungary

A new law entered into force on 15 July 1996 in Hungary on International Legal Assistance in Criminal Matters that covers also extradition.

Extradition may be granted on the basis of international convention, reciprocal agreement, or even failing those, if the Minister of Justice and the Minister of Foreign Affairs agree about granting extradition.

Extradition is permitted for the purposes of conducting criminal proceedings, if the act on the grounds of which extradition is requested is punishable under the laws of both Hungary and the Requesting State by at least one year of imprisonment; for the carrying out of a sentence of imprisonment or detention order extradition is permissible if at least six months of the sentence or measures employed remain to be served.

A Hungarian citizen can be extradited only if he/she is also a citizen of an other State and has his/her permanent resident in a Foreign State.

Extradition shall not be granted in the following cases:

- lapse of time (either in the Requesting State or in Hungary),
- pardon,
- lack of private motion (if it is required to start criminal proceedings in the Requesting State),
- final judgment on the offence (for which extradition is requested) has already been passed by a Hungarian Court.

Extradition cannot be granted if the request concerns political offences or other closely related offences, or military offences.

If the offence for which extradition is requested is an offence punishable by death according to the law of the Requesting State, the Minister of Justice shall only grant extradition subject to the condition that the Requesting State provide suitable guarantees that if the extradited person is sentenced to death, such punishment will not be enforced.

### *The procedure*

When the Hungarian police arrests a person wanted for extradition, this person can be held in custody for up to 72 hours. During this period the person claimed must be brought before the Metropolitan Court. The Metropolitan Court has exclusive competence and acts as a single judge. Appeals against its rulings may be lodged, which the appeal chamber of the Metropolitan Court shall review in chamber. Appeals shall have no delaying effect.

The court may order the provisional arrest for extradition if it is requested by the State which wishes to present a request for extradition in the future. Provisional arrest for extradition shall be terminated if no request for extradition is submitted within forty days of the order of such arrest.

When the request for extradition and related documentation (sentence or a warrant of arrest) arrives to the Ministry of Justice, the Ministry forwards the documents to the Metropolitan Court. If the conditions for extradition are fulfilled, it shall order the arrest for extradition of the person sought for extradition. Arrest for extradition may not exceed six months, and the Metropolitan Court may on one occasion extend this period for another six months.

The Minister of Justice shall release a person held under arrest for extradition without delay if extradition is refused, the extradition request is withdrawn, or the person surrendered is not taken over by the Requesting State within fifteen days of the designated time.

Simplified extradition proceedings: The Metropolitan Court, while proceeding for provisional arrest for extradition (if the conditions of the extradition can be laid down based on the information available) informs the person sought that if he consents to extradition, the principle of speciality will not be applied, and the Minister of Justice may consent to extradition prior to receiving the extradition request; this warning and the statement of the person sought for extradition shall be recorded. In this case the arrested person has to be surrendered within the 40 days of provisional arrest for extradition.

The Minister of Justice shall make the final decision on extradition. If according to the court decision the statutory conditions for extradition are not fulfilled, he/she shall refuse extradition, referring to the court's decision. The Minister of Justice shall inform the Requesting State about his/her decision.

If according to the court decision the statutory conditions for extradition are fulfilled, but the Minister of Justice – referring to the Hungarian reservation made to the Convention on Extradition – refuses extradition, the relevant documents must be sent to the Prosecutor General in order to decide on initiating a penal procedure in Hungary.

In co-operation with the police authorities, Interpol shall take measures for the surrender of extradited persons.

## IRELAND

### EXTRADITION PROCEDURES IN IRELAND

#### **Introduction**<sup>1</sup>

The processing of an extradition request, whether incoming or outgoing, involves a number of Government Departments and agencies within the Irish administrative system. The particular role performed by each Department or agency derives from our law on criminal procedure and extradition, the statutory functions of the Departments and agencies concerned, and the historical division of functions within the Irish administrative system.

The Departments and agencies having a role in extradition matters are the:

- Courts;
- Department of Foreign Affairs;
- Department of Justice;
- Garda Siochana (national police force);
- Office of the Attorney General;
- Office of the Chief State Solicitor; and the
- Office of the Director of Public Prosecutions.

The functions performed by each of these Departments and agencies are set out in the sections which follow which describe the typical path of an outgoing and incoming extradition request.

#### **OUTGOING EXTRADITION REQUESTS**

The initiation of an extradition request will normally originate with the Garda Siochana (national police force) on the basis of information available to them that a person who is sought to stand trial or to serve a sentence imposed by a criminal court is to be found in a country which is a party to the Convention or a country with which Ireland has a bilateral extradition arrangement.

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<sup>1</sup> This paper is concerned with the arrangements which apply for the purpose of Ireland's extradition relations with E.C. Member States under the European Convention on Extradition. It does not address the simplified arrangements, based on the endorsement of warrants, which apply between Ireland and the United Kingdom and which are unique to our two countries. Nor does it deal with arrangements for extradition to and from countries which are not parties to the European Convention on Extradition.

The matter will then be submitted to the Office of the Director of Public Prosecutions for a decision as to whether to proceed with the making of a request. In deciding whether to proceed with a request, the Office of the Director of Public Prosecutions will have reference to the requirements of the Convention, the seriousness of the offence or offences for which the person is sought, and, where a person's extradition is being sought for the purpose of trial, will satisfy itself that sufficient evidence exists to enable the criminal proceedings to proceed in the event of the person's extradition being secured. In the event of a decision being taken to proceed, the documents required by Article 12 of the Convention will be prepared by the Garda Síochána in consultation with the Office of the Director of Public Prosecutions and, where appropriate, with the Departments of Justice and Foreign Affairs. The Garda Síochána will also arrange to obtain the necessary warrants or other court orders by way of an application to the appropriate court. The necessary translations will also be prepared.

The completed file will then be transmitted to the Departments of Justice and Foreign Affairs where it will be examined further to ensure compliance with the requirements of the Convention. Any supplementary material deemed necessary will be sought from the Garda Síochána/Office of the Director of Public Prosecutions. Where an application is in order, the formal request will be prepared by the Department of Foreign Affairs and the request and supporting documents will then be transmitted through diplomatic channels to the requested country.

The arrangements which apply in the case of a request for provisional arrest under Article 16 of the Convention are somewhat similar except that that request may be capable of being transmitted directly by the Garda Síochána to a requested country through Interpol channels as an alternative to being transmitted through the diplomatic channel. Consultations would normally take place between the Garda Síochána, the Office of the Director of Public Prosecutions and the Departments of Justice and Foreign Affairs before a request for provisional arrest is initiated.

### **INCOMING EXTRADITION REQUESTS**

The typical path of an incoming extradition request derives primarily from the various requirements laid down by Part II of the Extradition Act 1965 which gives effect in Irish domestic law to the European Convention on Extradition. The procedural requirements of that Act must be complied with before a request for extradition can be acted upon and failure to comply with those requirements can be fatal to the outcome of a request.

For the purposes of an extradition request being made under the Convention, the request will be communicated by a diplomatic agent of the requesting country accredited to Ireland through the Irish Department of Foreign Affairs<sup>2</sup>. When a request has been received by the Department of Foreign Affairs it will be forwarded to the Office of the Attorney General and the Department of Justice. The Garda Síochána (national police force) would normally also be informed of the request at this stage and would begin to make enquiries to identify the whereabouts of the person whose extradition was being sought.

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<sup>2</sup> Extradition Act 1965 – Section 23

The function of the Office of the Attorney General is to advise as to whether the request complies with the Convention and the requirements of the Extradition Act 1965. That Office will advise the Department of Foreign Affairs of any procedural defects which require to be attended to in relation to the request and they in turn will bring these to the attention of the requesting authorities. The Office of the Attorney General will also advise the Department of Justice on the outcome of its consideration of the request.

The Department of Justice, when in receipt of that advice, will arrange for the formal submission of the request for extradition to the Minister for Justice. Under the Extradition Act 1965<sup>3</sup>, the Minister for Justice is empowered to require further information from the requesting country in certain circumstances or to refuse extradition if of the opinion that the case is one where extradition is prohibited under the Convention or Act. When satisfied that a request complies with the Act, the Minister for Justice will, by order, signify to a judge of the District Court that the request has been made and the judge will then issue a warrant for the arrest of the person whose extradition has been sought.

The warrant of arrest is transmitted to the Garda Síochána who are responsible for securing the arrest of the person concerned.

That person will on arrest be brought immediately before a judge of the District Court who has been nominated for the purpose of hearing the application for extradition by the Minister for Justice<sup>4</sup>. The State is represented in those proceedings by the Office of the Chief State Solicitor who will instruct counsel in appropriate cases. The District Court will commit the person to prison to await the order of the Minister for Justice for his extradition if it is satisfied that the Act applies to the country which has sought extradition, the extradition of the person has been duly requested, extradition is not prohibited by the Act or the Convention, and that the documents required to support the request for extradition have been produced<sup>5</sup>.

Where an order for committal to prison has been made, the person must be informed of his right to apply to the High Court under Article 40.4.2 of the Constitution for habeas corpus and the person may not be surrendered for fifteen days (except with his consent) or until any such application for habeas corpus or other appeal has been finally determined<sup>6</sup>. An appeal from any decision of the High Court will also lie to the Supreme Court. In the event of no application to the High Court, or an unsuccessful appeal, the person is then surrendered to the requesting country on foot of an order of the Minister for Justice<sup>7</sup>.

As in the case of extradition requests from Ireland, a request for provisional arrest may, in accordance with article 16 of the Convention and the relevant provisions of the 1965 Act, be transmitted by post or telegraph or other means affording evidence in writing<sup>8</sup>. The request must be made on the ground of urgency and state that it is being made on behalf of the requesting country. It must also comply with the requirements of Article 16. A request for provisional arrest must be followed by a formal request under Article 12 within eighteen days of the arrest of the

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<sup>3</sup> Extradition Act 1965 – Section 26

<sup>4</sup> Extradition Act 1965 – Section 28

<sup>5</sup> Extradition Act 1965 – Section 29

<sup>6</sup> Extradition Act 1965 – Section 29(3) and 31

<sup>7</sup> Extradition Act 1965 – Section 33

<sup>8</sup> Extradition Act 1965 – Section 27

person sought who must be released if the formal request, supported by the necessary documentation, duly authenticated, has not been received within that time.

### **SPECIAL FEATURES OF IRISH LAW**

It will be clear from the foregoing description of our extradition procedures that particular care needs to be taken to ensure that requests made to Ireland comply strictly with the requirements laid down by the European Convention on Extradition and with our law as to the form and content of extradition requests because both the Minister for Justice and the courts are required to satisfy themselves that requests have been made in accordance with the Convention and Act.

In that connection we would draw particular attention to the provisions of sections 23, 25 and 37 of the Extradition Act 1965 which govern the manner in which a request is to be made, the documents to be submitted in support of a request and the means by which they are to be authenticated. A copy of the provisions concerned is in Appendix 1 for ease of reference.

A comprehensive guide to the making of extradition requests to Ireland is in the course of preparation and will be made available to all contracting parties to the Convention in due course. In the meantime, the relevant Irish authorities will be happy to provide other parties to the Convention with advice in relation to the manner in which the requirements of Irish law regarding the making of a request or its form can be met for the purpose of any case which is being contemplated.

In the meantime, countries might also bear the following matters, which are not intended to be exhaustive, in mind to ensure compliance with the requirements of sections 23 and 25:

- (a) all the documents required by Article 12 of the Convention (see section 25 generally) are required to be submitted in support of a request for extradition and should be accompanied by English translations;
- (b) the formal extradition request itself should be contained in a letter from the Ambassador or Chargé d'Affaires of the requesting country's Embassy in Ireland addressed to the Minister for Justice (addressing the Minister by title rather than by name) and should indicate that the request is being made on behalf of the country concerned;
- (c) Ireland should be described in any request or document being submitted in support of a request as Ireland and not as the Republic of Ireland or Eire;
- (d) the documents required by Article 12(2)(a) of the Convention (see section 25(a)) - conviction, sentence, detention order, warrant of arrest, etc. - should be accompanied in each case by a statement to the effect that it has been issued in accordance with the procedure laid down in the law of the requesting country either by endorsing a statement to that effect on the document or attaching it to it;
- (e) for the purpose of complying with Article 12(c) of the Convention insofar as it relates to a description of the person whose extradition is being sought (see section 25(e)), a full description and as much information and supporting evidence as possible (e.g. photograph and fingerprints) should be provided as to his/her identity.

Section 37 of the Extradition Act 1965 requires all documents supporting a request for extradition to be signed or certified by a judge, magistrate or officer of the requesting country and authenticated by the oath of some witness or by being sealed with the official seal of a minister of state of that country. Such documents cannot be received in evidence in Ireland if they do not comply with these requirements.

## APPENDIX 1

### EXTRADITION ACT 1965 - SECTIONS 23, 25 and 37

Request for extradition. [Article 12.1]

23.- A request for the extradition of any person shall be made in writing and shall be communicated by:

- (a) a diplomatic agent of the requesting country, accredited to the State, or
- (b) any other means provided in the relevant extradition provisions.

Documents to support request. [Article 12.2]

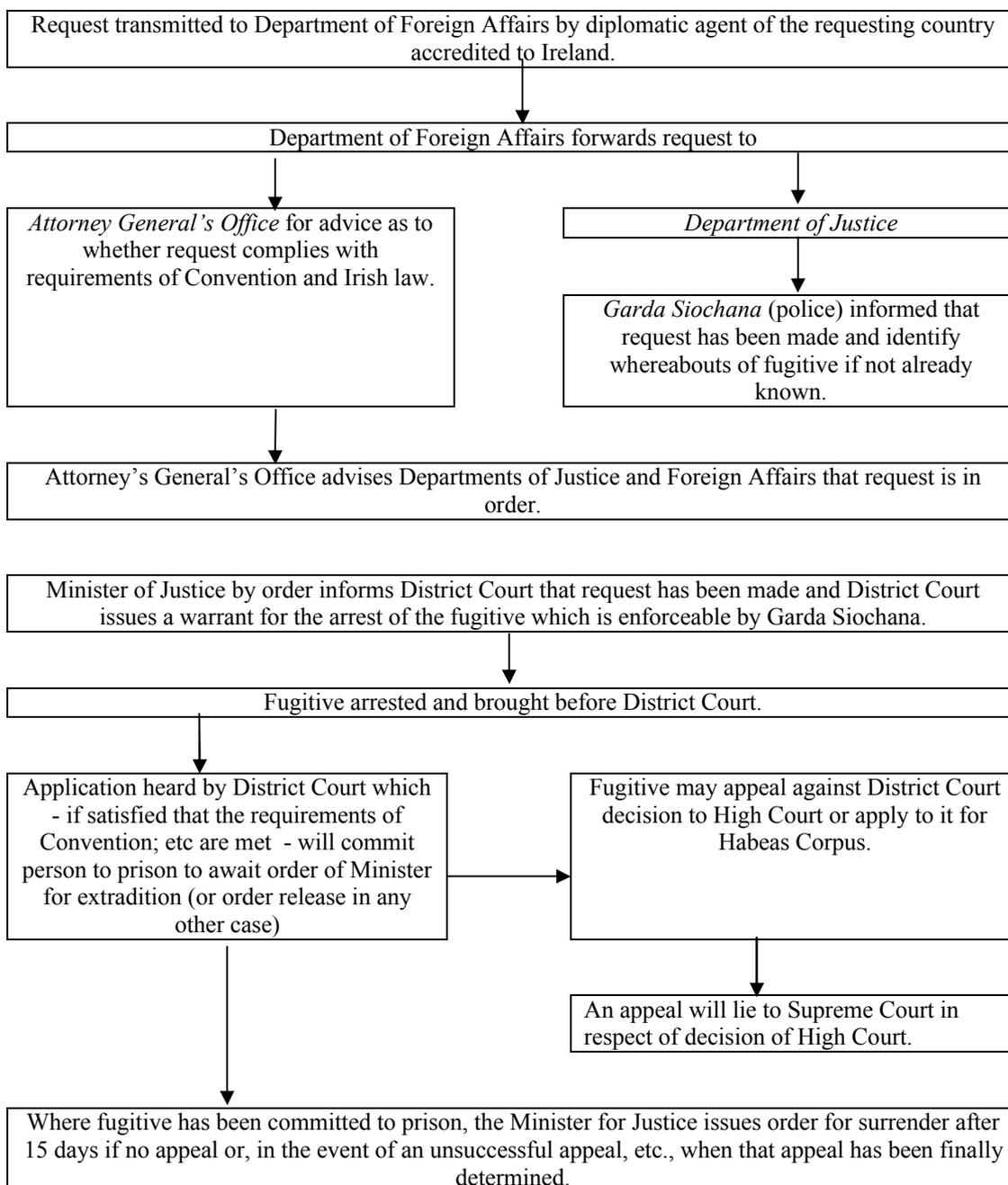
25.- A request for extradition shall be supported by the following documents:

- (a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or, as the case may be, of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting country;
- (b) statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting country;
- (c) a copy of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law;
- (d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality, and
- (e) any other document required under the relevant extradition provisions.

Evidence of documents

37.- A document supporting a request for extradition shall be received in evidence without further proof if it purports to be signed or certified by a judge, magistrate or officer of the requesting country and to be authenticated by the oath of some witness or by being sealed with the official seal of a minister of state of that country and judicial notice shall be taken of such official seal.

## APPENDIX 2

REQUEST FOR EXTRADITION RECEIVED BY IRELAND  
TYPICAL PATH



**ISRAEL**

(Not available on Internet)



## ITALY

### EXTRADITION PROCEDURES IN ITALY

#### INCOMING REQUESTS

1. If the fugitive is internationally wanted by a foreign country while he/she is on Italian territory, he/she shall be arrested by the police under Article 716 of the Code of Penal Procedure, provided that the conditions laid down in Article 715, paragraph 2 of the Code of Penal Procedure are met.

If they are not, the Court of Appeal may - at the request of the Minister of Justice and either before the extradition request is received (under Article 715 of the Code of Penal Procedure), or at any time (under Article 714 of the Code of Penal Procedure) - order a coercive measure (among those set forth in Articles 281 to 286 of the Code of Penal Procedure) to be applied to the person whose extradition has been requested;

2. In the case of arrest by the police under Article 716 of the Code of Penal Procedure, such a measure must be validated within 96 hours by the Presiding Judge of the competent Court of Appeal in whose district the arrest has taken place, in default of which the fugitive must be released (Article 716, paragraph 3 of the Code of Penal Procedure);

3. Provided that any relevant condition is met, the Minister of Justice, within 10 days of the aforesaid validation, orders the coercive measure to continue (Article 716, paragraph 4 of the Code of Penal Procedure) and it shall last until the expiry of the provisional arrest, the duration of which depends, from case to case, on the extradition convention applicable.

If there is no convention between the parties, the maximum term of provisional arrest, before the request for extradition with the relevant documentation has been submitted by the requesting state, is 40 days (Article 715, paragraph 6 of the Code of Penal Procedure);

4. A fugitive who has been arrested must be heard pursuant to Article 717 of the Code of Penal Procedure, and at the relevant hearing the fugitive must be identified and requested to state whether he/she gives his/her consent to extradition.

**CONSENT**

5. i) If consent is given, a sort of “abbreviated or simplified extradition” takes place, in that neither the judicial proceedings before the Court of Appeal, nor those before the Court of Cassation as a result of a possible appeal, are carried out;
6. i) 45 days after the consent has been communicated (Article 708 of the Code of Penal Procedure), the Minister decides on the extradition request;
7. i) The Minister's decision is notified both to the requesting authorities, through diplomatic channels or directly, as agreed, (eg: through RFG channels), and to the judicial authorities (Court of Appeal and District Attorney General's Office), for these to place the fugitive at the disposal of the police (Interpol) responsible for his surrender.

**CONSENT DENIED**

5. ii) [Following on from point 4 above.] If the fugitive does not give his/her consent, the Minister, as soon as he/she has received the extradition request and the relevant documentation from the requesting authorities, forwards them to the District Attorney General's Office attached to the Court of Appeal, competent under Article 701, paragraph 4 of the Code of Penal Procedure, in order that action under Article 703 of the Code of Penal Procedure can be taken (together with a translation of the documents, as necessary), \_\_unless he (the Minister) is of the opinion that the request should be rejected”;
6. ii) Within 3 months of the date of receipt of the extradition request, the District Attorney General submits his opinion and his requests, along with the documents and any item seized, to the Court of Appeal (Article 703, paragraphs 4 and 5 of the Code of Penal Procedure);
7. ii) Provided that the deadlines laid down in Article 703, paragraph 5 of the Code of Penal Procedure have been observed, the Presiding Judge of the Court of Appeal sets a hearing for the decision (Article 704, paragraph 1 of the Code of Penal Procedure);
8. The Court decides in chambers on the existence of the conditions for the granting of the extradition request (Article 704, paragraph 2 of the Code of Penal Procedure);
9. An appeal against the decision of the Court of Appeal, also on the merits of the case, may be made by the person concerned, by his defence counsel, by the District Attorney General and by the representative of the requesting country;
10. Coercive measures are revoked if one year has elapsed from the start of their enforcement without the Court of Appeal having rendered a judgment granting the extradition or, when an appeal against such judgment has been made to the Court of Cassation, a year and six months have elapsed without the proceedings before the court having been completed. At the request of the District Attorney General, these deadlines may be extended more than once, up to a total period not exceeding three months when this is required for particularly complex investigations;

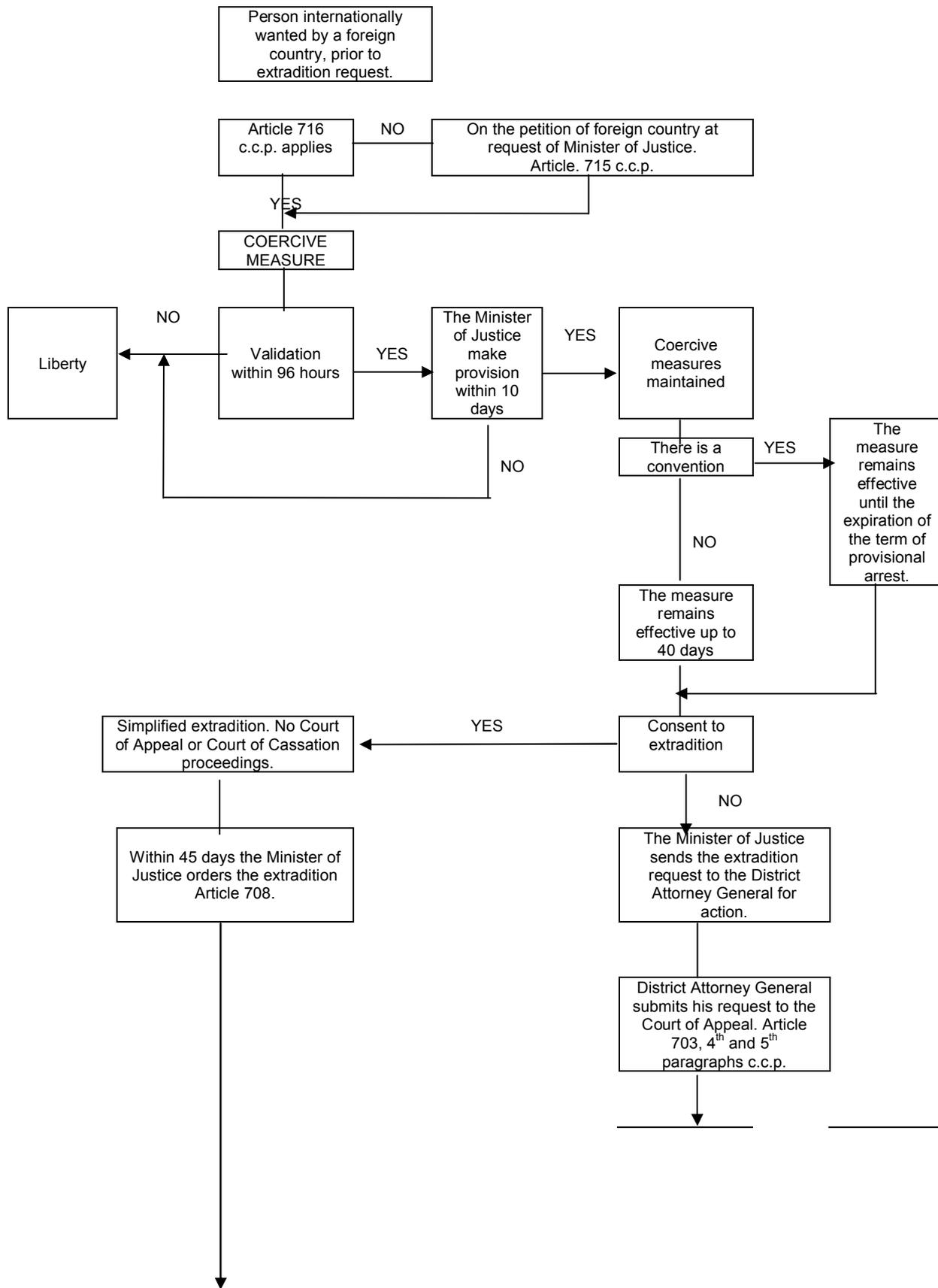
11. Upon the decision of the judicial authority becoming final, a refusal of the extradition request is merely notified to the requesting authority. Alternatively, in the case of a decision in favour of the extradition, the Minister of Justice must decide within 45 days following the notice of expiration of the deadline for appeal or the filing of the Judgment of the Court of Cassation (Article 708, paragraph 1 of the Code of Penal Procedure) whether or not the extradition should be granted;
12. The decision of the Minister is notified as provided for in point 7 above.

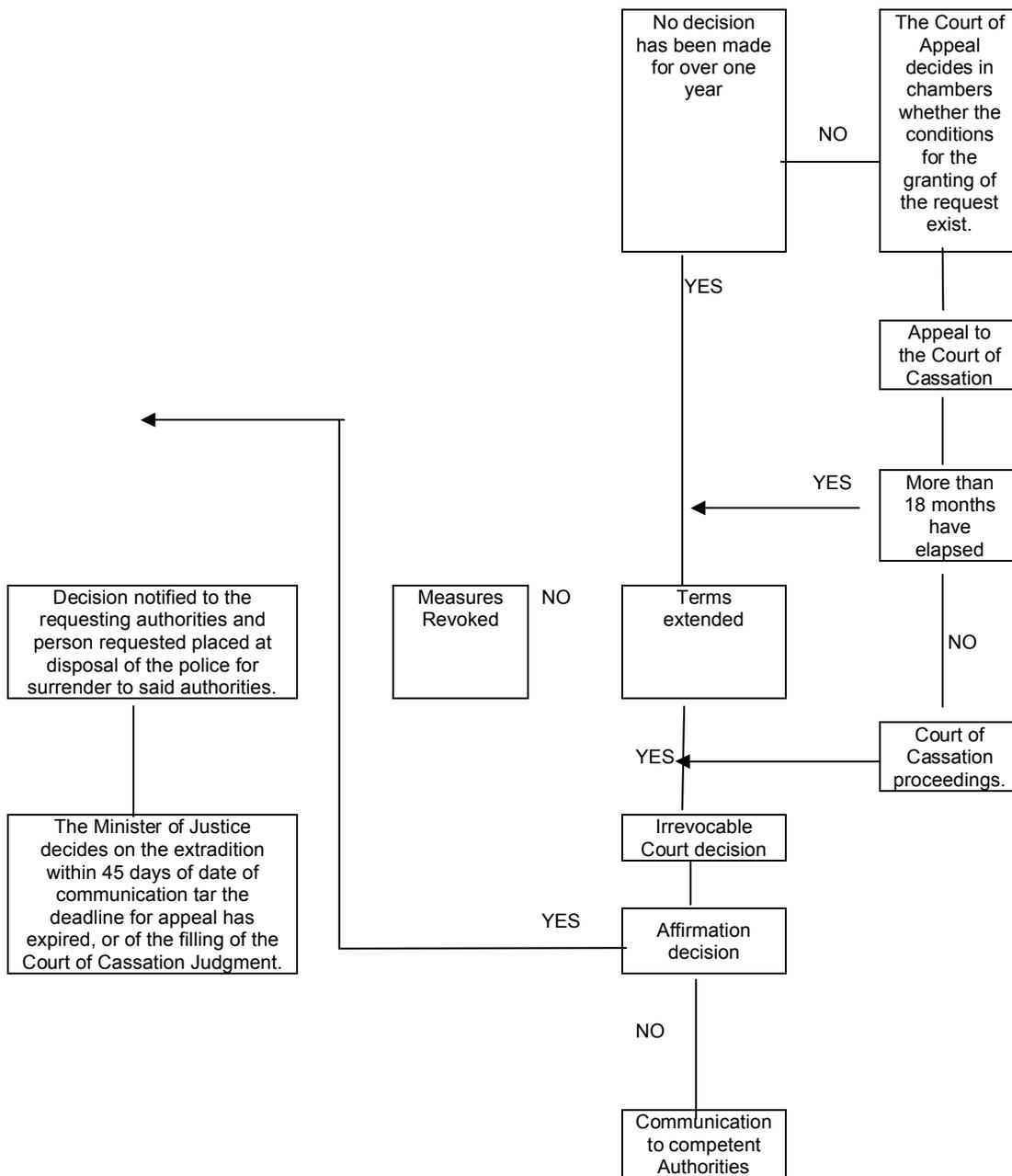
### **OUTGOING REQUESTS**

1. The existence of a detention measure which has not been executed because of the inability to locate the fugitive is a condition for the commencement of the extradition proceedings;
2. Upon a report from the judicial authority or from Interpol, the Minister of Justice, pursuant to Article 720, paragraph 5 of the Code of Penal Procedure, orders a search to be made at international level for extradition purposes;
3. If the fugitive is found, the Minister requests - almost always through Interpol, except in the case of the U.S.A., Australia, Canada and all countries with which no convention is in force in which case the request is made through diplomatic channels - such person to be provisionally arrested for extradition purposes.
4. Before the expiry of the period of detention for extradition purposes - which depends either on the relevant Convention (ie: European Convention, 40 days; Bilateral Convention with the Kingdom of Belgium, 21 days; etc.) or on the domestic legislation of the requested country, where no convention has been entered into (eg: Brazil, 90 days) - the Minister of Justice submits an extradition request through diplomatic channels with the required supporting documents. These documents, like the period of provisional arrest vary in accordance with the various extradition arrangements;
5. The decision of the requested country (request rejected, request wholly granted, request partially granted) is notified through official channels to the competent judicial authority in order that the speciality rule can be observed;
6. Interpol, which contacts the local authorities, is responsible for the surrender of the fugitive. The Ministry only arranges for the national airline company (Alitalia) to issue the required air tickets;
7. Once the fugitive has been surrendered, he/she is placed at the disposal of the judicial authority which commenced the extradition proceedings.

NB. The procedure can also start directly from point 3 (in the case of a detention measure taken against a fugitive whose whereabouts abroad is known) or from point 4 (by submitting the extradition request directly, for instance when the person to be extradited is serving a sentence abroad).

**EXTRADITION PROCEDURES IN ITALY**







## LATVIA

### 250. Extradition of a Person

(1) If persons are hiding in the territory of the republic of Latvia who have committed a criminal act in a foreign country where a criminal case has been initiated, criminal prosecution begun, sent to the Court and a Court judgment of conviction has come into effect against him/her, then pursuant to provisions of international agreements, having received a request for extradition from the foreign country, the Prosecutor General of the Republic of Latvia, pursuant to the received documents, decides the question of extraditing this person and forwards the adopted decision to the Ministry of Interior for execution.

(2) The decision of extradite a person shall indicate the name, year of birth of the person, justification of the extradition, when and who was charged with the execution of the decision, and the documents attached to the decision. A translation of the decision into the relevant foreign language is attached.

(3) Extradition of a person from the Republic of Latvia to a foreign country is not permissible if:

- 1) he/she is a Latvian citizen;
- 2) the criminal act was committed in the territory of the Republic of Latvia;
- 3) a court verdict has been handed down and it has taken effect regarding the criminal act regarding which the request for extradition is made, also if the case has been dismissed;
- 4) according to the Laws of the Republic of Latvia a person may not be criminally charged because of the statute of limitation or other legal reason;
- 5) the act regarding which extradition of the person is requested is not a criminal act under the Criminal Code of the Republic of Latvia;
- 6) the person has been granted political asylum in the territory of the Republic of Latvia.

There are also some bilateral treaties on Legal Co-operation and Assistance dealing with this matter, i.e. : with Estonia, Lithuania, Poland, Byelorussia, Russia, Moldova and Ukraine.



**LITHUANIA**

(Not available on Internet)



# LUXEMBOURG

## EXTRADITION PROCEDURES IN LUXEMBOURG

### I. REQUEST FOR EXTRADITION INTRODUCED BY A FOREIGN COUNTRY

#### 1. Procedure for non-urgent cases

- (a) Request made by the requesting country through the diplomatic channel and taken up by the Ministry of Justice, either at the Diekirch or Luxembourg Public Prosecutor's Department, where competent, or the Attorney General's Department.
- (b) Examination by the Prosecution Departments of the conformity of the request with national law, and with the relevant extradition treaty, if such a treaty is in force.
- (c) Reasoned opinion drawn on the subject by the Attorney General's Department.
- (d) Hearing by the Council Chamber of the Court of Appeal including a debate between both sides in the presence of the person who is the subject of the extradition request, his legal counsel and the Prosecution Department.

Reasoned opinion rendered by the Council Chamber of the Court of Appeal, considering whether or not the request conforms with the provisions of national law or the treaty between the states involved. Whether or not the subject of the extradition request is guilty lies is not examined by the Luxembourgish judicial authority.

- (e) Handing over of the relevant files to the Ministry of Justice.
- (f) Decision taken by the Minister of Justice in accordance with the deliberation of the Government in Council.

The extradition can only be granted by the executive powers in agreement with the above mentioned opinion of the Council Chamber of the Court of Appeal. The Government has the right to refuse extradition for reasons relating to national law, or reservations made under the relevant extradition treaty.

In the event of a positive decision by the executive powers, arrangements are made to return the person concerned to the requesting country following procedures set out in advance between the states concerned.

## **2. Procedure in urgent cases where provisional arrest applies**

- A) Request for legal proceedings in the requesting country.
- (a) Despatch of the application by the requesting country through the diplomatic channel where applicable, or direct to the judicial authorities in Luxembourg.
  - (b) Arrest warrant issued by the Luxembourgish examining magistrate with local jurisdiction, based on a request by the relevant Public Prosecutor's Department, after preliminary verification of the application according to the national law or the relevant treaty.
  - (c) Foreign arrest warrant declared valid by the Council Chamber of the Local Court within the time period allowed for the official transmission of documents.
  - (d) Transmission of the file to the Attorney General's Department.
  - (e) Reasoned opinion drawn by the Attorney General's Department.
  - (f) Reasoned opinion drawn by the Council Chamber of the Court of Appeal.
  - (g) Transmission of a file compiled for the purpose to the Ministry of Justice.
  - (h) Decision taken by the Minister of Justice in accordance with the deliberation of the Government in Council.
- B) Request with a view to carrying out an executory judgment.
- (a) Transmission of the request, where applicable, through the diplomatic channel, or direct to the judicial authorities in Luxembourg.
  - (b) Arrest warrant issued by the examining magistrate based on a request made by the relevant Public Prosecutor's Department concerned, following verification that the request is valid according to the national law or the relevant treaty.
  - (c) Transmission of the file to the Attorney General's Department after receiving papers requested through the diplomatic channel.
  - (d) Opinion expressed by the Attorney General's Department.
  - (e) Reasoned opinion drawn by the Council Chamber of the Court of Appeal.
  - (f) Transmission of the file to the Ministry of Justice.

(g) Decision taken by the Minister for Justice in accordance with the deliberation by the Government in Council.

## **II. REQUEST FOR EXTRADITION MADE TO A FOREIGN COUNTRY**

### **1. Procedure for non-urgent cases**

(a) 1) In the event of public prosecution, the request is made by one of the Prosecutor's Departments or by the Attorney General's Department based on a warrant of arrest issued by the examining magistrate, or issued by the Examining Magistrate's Local or Appeal Courts or the Tribunal or Court entertaining jurisdiction in case the fugitive fails to appear.

(a) 2) In the event that a sentence is to be carried out, the request will come from the Attorney General's Deputy responsible for the implementation of sentences.

(b) Transmission of the file with the documents requested to the Ministry of Justice so that they can be passed on to the requested country.

If the requested State agrees, surrender of the fugitive for legal proceedings or implementation of the sentence.

### **2. Procedure for urgent cases**

Typical path as for 1 above, except that requests will come either from the Attorney General's Department or a Public Prosecutor's Department will be sent to the countries concerned, either directly, or through Interpol.

#### General Comments

a) Concerning the documentation requested and the time periods to be observed, there are grounds for strictly adhering to the conventions in force. The transmission of documents and information available should take place as quickly as possible so that we can be ready to deal with possible requests for additional information before the time period to be observed expires.

b) It is vital that the requesting State provides adequate information to enable us to determine beyond doubt the identity of the person whose extradition is requested.

Depending on the offence of which this person is accused, it will be necessary not only to indicate the offence, but also to specify the legal term for this offence according to the criminal law of the requesting State, and to attach to the request a copy of the articles of criminal law of the requesting State which apply to the offence in question.

c) Clearly, any useful information, particularly in the search for and the arrest of the fugitive, should be sent to the requested State so that it can commence the procedure with as much information available as possible.

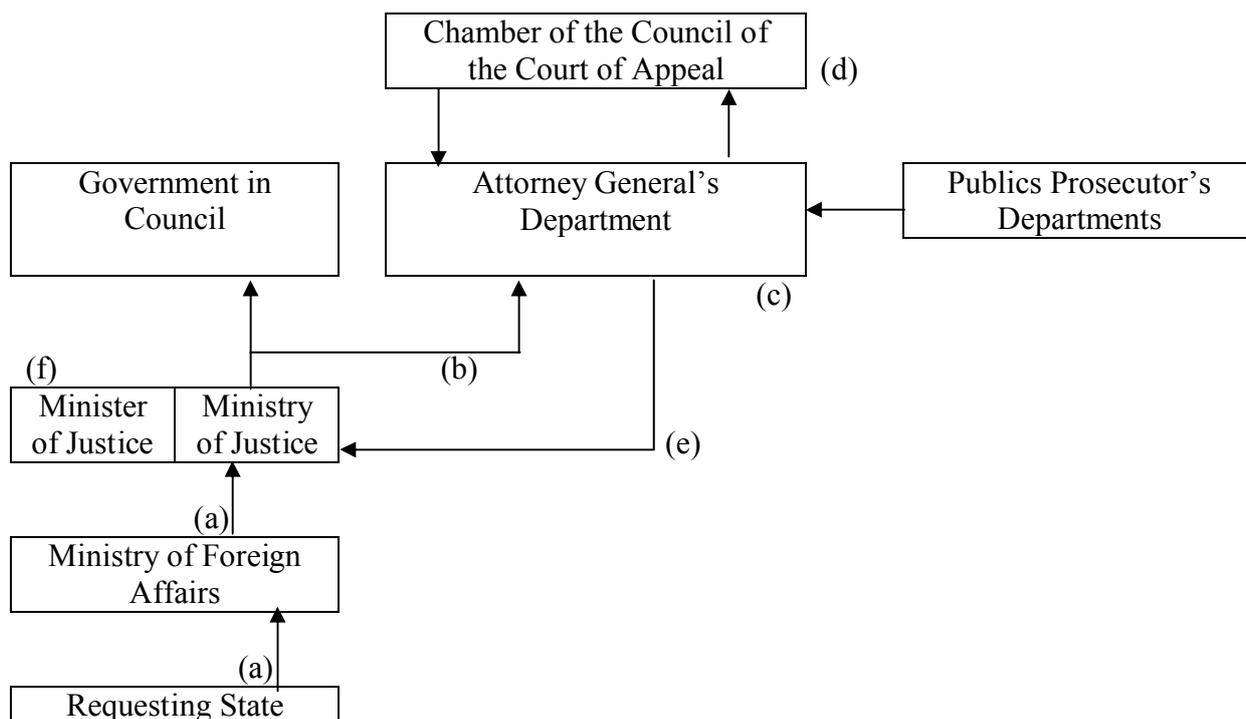
d) Outside the scope of these conventions, the Common Law of Extradition, the Act of 13 March 1870 on the Extradition of Foreign Criminals, will apply with the effect that, in the event of provisional arrest following the procedure for urgent cases, the detainee shall be released fifteen days after the date of his arrest if the extradition is to be carried out at the request of a government in a country which borders on Luxembourg, and after a month if the case involves a country further away, if no arrest warrant has been received from the relevant foreign authority.

In any event, according to Luxembourgish Common Law on Extradition, any foreigner who has been arrested on a provisional basis, should be set free if he has not received notification within two months of a sentence rendered either by a Tribunal or the Court of Appeal or, an order issued from the Council Chamber of a Local Court, or the Council Chamber of the Court of Appeal, or an act of prosecution from the competent authority decreeing formally or implying ipso jure the transfer of the accused person to the criminal jurisdiction.

**LUXEMBOURG :**  
**REQUEST FOR EXTRADITION FROM LUXEMBOURG**  
**INTRODUCED BY A FOREIGN COUNTRY**

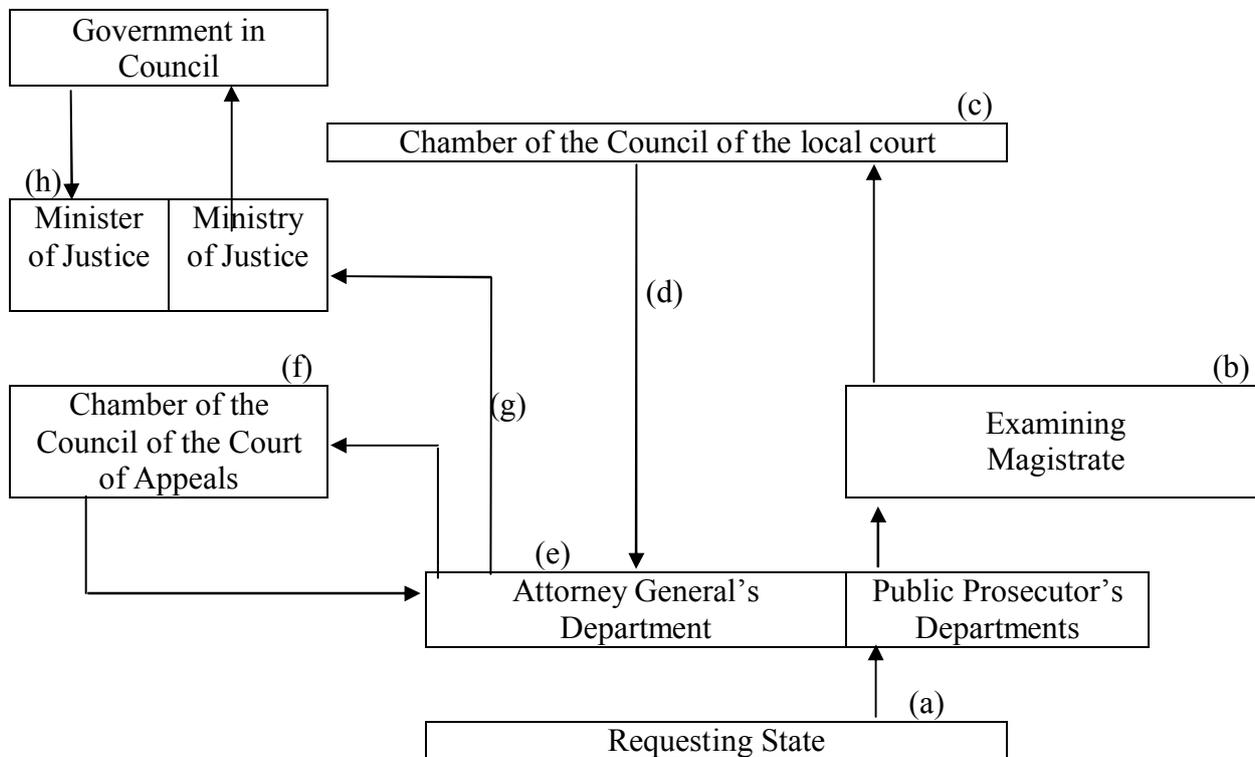
**TYPICAL PATHS**

1. Procedure for non-urgent cases

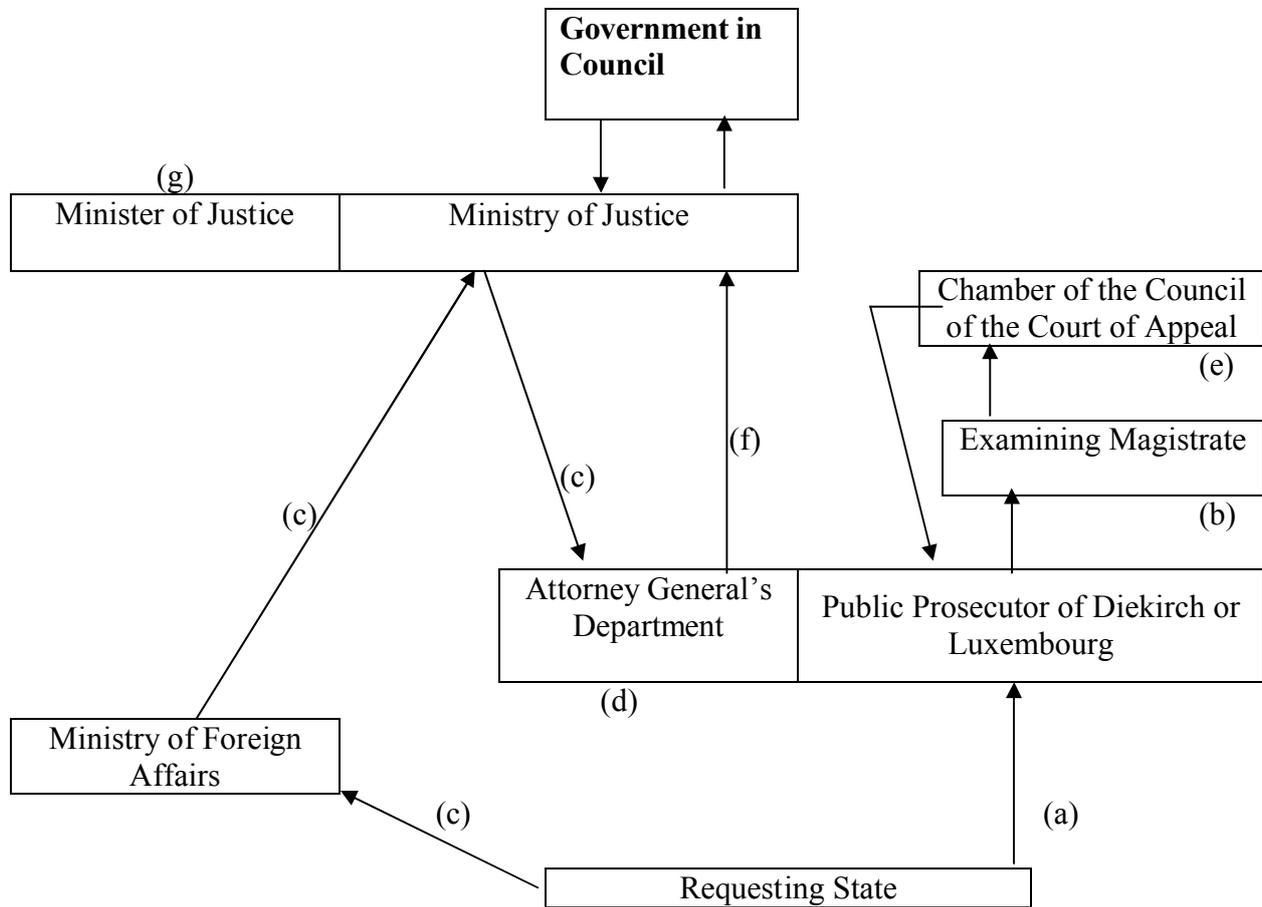


**2. Procedure in urgent cases where provisional arrest applies**

a) Request to have legal proceedings carried out in the country requesting extradition



b) Request with a view to carrying out an executory judgement

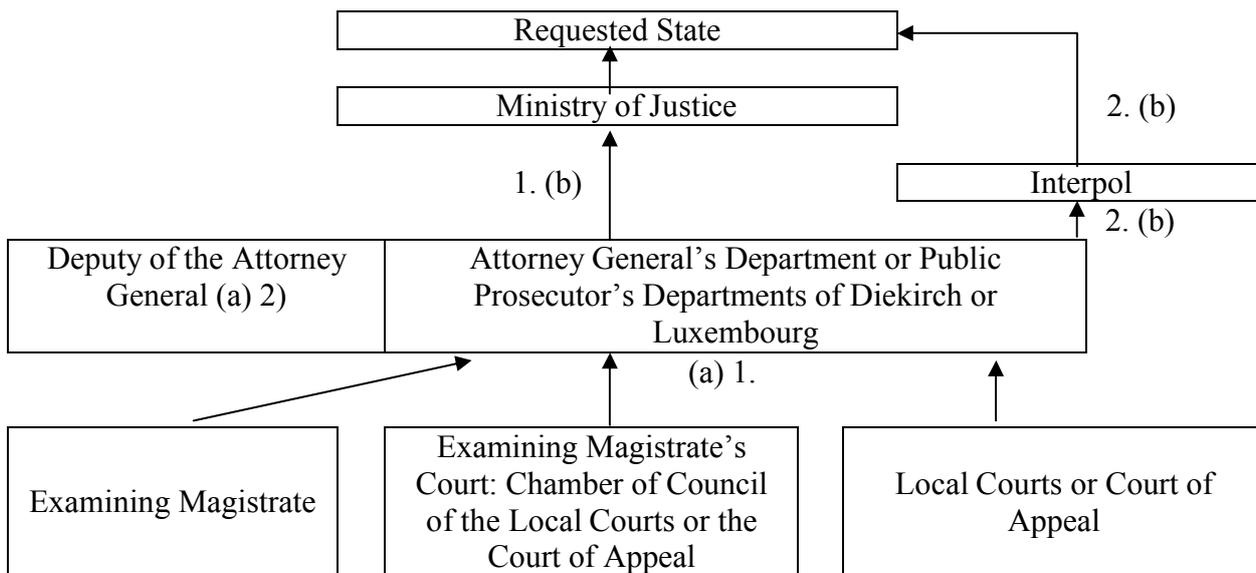


**LUXEMBOURG**

**REQUEST FOR EXTRADITION MADE  
TO A FOREIGN COUNTRY  
TYPICAL PATHS**

**1. Procedure for non-urgent cases**

**2. Procedure for urgent cases**



# THE NETHERLANDS

## EXTRADITION PROCEDURES IN THE NETHERLANDS

### GUIDANCE NOTES FOR EXTRADITION REQUEST TO THE NETHERLANDS FOR EC COUNTRIES PARTY TO THE EUROPEAN CONVENTION ON EXTRADITION OF 13 DECEMBER 1957

#### 1. PROVISIONAL ARREST AND DEPRIVATION OF LIBERTY

The fugitive may be subject to provisional arrest if:

— there are well-founded reasons to believe that a request for extradition which is liable to be granted will shortly be made; and

— the offence concerned is one for which pre-trial detention is permissible, the request concerns the execution of a custodial sentence or non-punitive order involving deprivation of liberty; or if the fugitive has no fixed abode or place of residence in the Netherlands (Section 13 of the Extradition Act in conjunction with Article 16 of the Convention).

A warrant for provisional arrest is issued by the police (Section 14 of the Extradition Act). A person who has been provisionally arrested must be brought before the police official who issued the warrant for provisional arrest within 24 hours (Section 14 of the Extradition Act). Having heard the fugitive, this police official may order him to remain in police custody for a period of 48 hours from the moment of provisional arrest. The period of police custody may be extended once, by the Public Prosecutor, for a further 48 hours (Section 14 of the Extradition Act).

After this, the examining magistrate may, at the request of the Public Prosecutor, order the fugitive to be remanded in custody (Section 15 of the Extradition Act). Remand in custody of the fugitive may last a maximum of 20 days before the official request for extradition is received (Section 16 of the Extradition Act in conjunction with Article 16 of the Convention). After receipt of the request for extradition, the fugitive may continue to be deprived of his liberty at the request of the Public Prosecutor, until such time as the District Court makes a decision on his detention (Section 22 of the Extradition Act).

## 2. THE REQUEST FOR EXTRADITION

2.1 The request for extradition must be made in writing, either through diplomatic channels or - insofar as the provisions of the relevant Convention allow - directly to the Minister of Justice (Section 18 of the Extradition Act). The Netherlands is a signatory to the Second Additional Protocol to the European Convention on Extradition of 17 March 1978, and accepts extradition requests from other parties to this Protocol which are sent directly to the Ministry of Justice.

In the case of provisional arrest, the request for extradition must be made within the period of time referred to in paragraph 1 above. To ensure that this period is not exceeded, steps should be taken to ensure that the request is received by the Ministry of Justice in The Hague at least 3 days before the time limit expires. Should this prove impossible, it is recommended that the Ministry of Justice should at least be contacted within the appropriate period.

2.2 The request for extradition must be accompanied by the documents referred to in Article 12 of the Convention. The following points are of importance in this respect:

— The copies of the sentence passed on the fugitive or the warrant for his arrest must be properly authenticated, and the judgment concerned must be clearly enforceable;

— Any part of a sentence already served must be specified;

— In view of the reservation entered by the Netherlands to Article 1 of the Convention, it must be clear from a request for extradition concerning the execution of a sentence passed in absentia and based on this Convention, that the fugitive had a real opportunity to defend himself, or will be given the opportunity to do so;

— The summary of the facts must make it clear whether the requirement that the offence be punishable in both States is met. The facts need not be summarised in a separate document; it is sufficient that the sentence or warrant for arrest accompanying the extradition request contains a clear summary of the facts;

— Relevant legal documents sent in support of the request should include, where appropriate, Articles of the law pertaining to an attempt to commit the offence concerned, as well as the table showing, for example, that a particular narcotic is a narcotic according to the law of the requesting State.

## 3. MINISTERIAL DECISIONS PRIOR TO LEGAL PROCEEDINGS

— Before the Minister of Justice forwards the request for extradition to the competent Public Prosecutor, he may request that it be supplemented or amended. The Minister sets a time limit for receipt of such supplementary information (Article 19 of the Extradition Act) which the requesting State is obliged to observe;

— The Minister will refuse the request forthwith if it is clear from the outset that the request cannot be granted (Section 20 of the Extradition Act).

#### 4. FORWARDING THE REQUEST TO THE PUBLIC PROSECUTOR

The Minister of Justice forwards the request to the competent Public Prosecutor (Section 20 of the Extradition Act). Upon receipt of the request, if the fugitive is not already under provisional arrest, the Public Prosecutor may issue a warrant for his arrest (Section 21 of the Extradition Act). In this respect, it is important that the believed whereabouts or place of residence of the fugitive is given as precisely as possible in the request for extradition. This obviously also applies to the warrant for the person's arrest. The Public Prosecutor must submit a written application to the District Court directing it to deal with the request for extradition, on or before the third day following its receipt (Section 23 of the Extradition Act).

#### 5. JUDICIAL PROCEEDINGS

5.1 Immediately upon receipt of the Public Prosecutor's application, the District Court sets the date on which the fugitive will be heard. During this hearing the Court examines the identity of the fugitive, as well as the admissibility of the request for extradition and the scope for granting it (Section 26 of the Extradition Act). Under the terms of the Convention, the Court may decide that the extradition is inadmissible on the following grounds (Section 28 of the Extradition Act):

- the documents are unsatisfactory (Section 28 of the Extradition Act);
- the requirement that the offence be punishable in both States has not been fulfilled (Section 5 of the Extradition Act);
- the fugitive is a Dutch national. This does not necessarily preclude extradition, however, where extradition is requested for the purposes of prosecution; see point 6 below (Section 4 of the Extradition Act);
- the offence is of a political nature, or an associated offence (Article 11 of the Extradition Act);
- it is an offence under military law (Section 11 of the Extradition Act);
- it is an offence under fiscal law, unless this is expressly provided for by international agreement, e.g. Article 2 of the Second Additional Protocol to the European Convention on Extradition (Section 11 of the Extradition Act);
- ne bis in idem (Section 9 of the Extradition Act);
- the time limit has expired (Section 9 of the Extradition Act);
- the fugitive sentenced in absentia has had insufficient opportunity to defend his case (Section 5 of the Extradition Act). These grounds are based on the Dutch reservation to Article 1 of the Convention, which reads as follows: "The Netherlands Government reserves the right not to grant an extradition request for the purpose of executing an irreversible judgment pronounced in absentia, if the extradition might result in the fugitive being subjected to a penalty without having been able to exercise the right of defence prescribed in Article 6 (3c) of the Convention

for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950".

In addition, the District Court can declare the extradition inadmissible if the fugitive can immediately prove, without any further investigation being required, that he is not guilty of the offence for which his extradition has been requested (Section 28 of the Extradition Act).

The District Court pronounces judgment within 14 days of the court hearing. It may rule that the extradition is wholly or partly admissible or inadmissible (Section 28 of the Extradition Act). The District Court immediately sends a certified copy of the judgment to the Minister of Justice. If it declares extradition to be wholly or partly admissible, it advises the Minister as to the way in which the request should be handled (Section 30 of the Extradition Act). The court may cite humanitarian or other circumstances that, while not constituting grounds to declare the extradition inadmissible on one of the grounds referred to above, may lead the Minister to refuse the request.

5.2 The District Court decides at the same time whether the fugitive, who is already being held in detention with a view to extradition, should remain in custody.

5.3 Both the Public Prosecutor and the fugitive are entitled to lodge an appeal for cassation with the Supreme Court against the District Court judgment within 14 days of the latter. The Supreme Court will either dismiss the appeal or either wholly or partly quash the judgment of the District Court, after which it will pronounce final judgment on the case itself. The Supreme Court will immediately send a certified and authenticated copy of its judgment with the file to the Minister of Justice (Section 31 of the Extradition Act).

## **6. DECISIONS ON THE REQUEST FOR EXTRADITION BY THE MINISTER OF JUSTICE**

The Minister of Justice decides whether or not to grant the request for extradition as soon as possible after receiving the District Court judgment and the case file (Section 33 of the Extradition Act).

— If the Court has pronounced the request inadmissible, the Minister is obliged to refuse it. If it has been declared inadmissible solely on the basis that the documents are unsatisfactory, the Minister may defer his decision, in order to give the authorities of the requesting State the opportunity to submit further documents within a time limit set by him. The same applies if the Minister himself deems further documents necessary in order to reach a well-considered decision. If these documents are not forthcoming within the stipulated time limit, the Minister will refuse the request for extradition (Section 33 of the Extradition Act). If he does receive them in good time and the District Court had ruled that the documents were unsatisfactory, the Minister may then put the request before the court once again. In the event that he himself had deemed further documents necessary in order to reach a well-considered decision, he can now make this decision.

— In the following cases, the Minister of Justice may refuse a request for extradition even though the court has ruled that the request is admissible:

1. If he finds that there is a well-founded reason to suspect that the fugitive will be persecuted, punished or otherwise suffer on account of his religious or political convictions, nationality, race or the ethnic group to which he belongs (Section 10 of the Extradition Act).
2. If he judges that the consequences of extradition for the fugitive would be exceptionally harsh, particularly in the light of the person's youth, advanced years or ill health (Section 10 of the Extradition Act). The Netherlands has entered a reservation to Article 1 of the Convention to this effect.
3. If extradition has been granted to a third State (Section 35 of the Extradition Act).
4. If criminal proceedings have been initiated in the Netherlands against the fugitive in connection with the same offence (Section 9 of the Extradition Act).
5. If the offence in respect of which the request has been made was committed outside the territory of the requesting State (Article 7 of the Convention).
6. If the fugitive is in the Netherlands as a result of extradition from a third State, and the latter does not agree to the person being re-extradited.
7. If, in the case of extradition for the purpose of criminal prosecution, the fugitive is a Dutch national, and it cannot be guaranteed that, in the event of his receiving a custodial sentence (not suspended) for the offence in respect of which his extradition has been requested, he will be allowed to serve this sentence in the Netherlands (Section 4 of the Extradition Act and the declaration concerning Articles 6 and 21 of the Convention). Dutch nationals are extradited only for the purposes of a criminal investigation directed against them in the requesting country, and then only if the Minister of Justice has been given prior guarantees that, in the event of their receiving a custodial sentence (not suspended) for the offence in respect of which extradition is requested, they will be allowed to serve this sentence in the Netherlands. It is not possible for Dutch nationals to be extradited in order for a sentence which has already been passed to be executed.

For the purposes of application of the European Convention on Extradition of 13 December 1957, the following persons are regarded as having a status equivalent to that of Dutch nationals: "foreigners integrated in the Netherlands community insofar as they can be prosecuted within the Kingdom of the Netherlands for the act in respect of which extradition is requested" (declaration concerning Articles 6 and 21 of the European Convention on Extradition).

## **7. SURRENDER OF THE FUGITIVE BY THE NETHERLANDS**

7.1. A copy of the decision of the Minister of Justice is forwarded to the requesting State. If the request for extradition is granted, either wholly or partly, the Public Prosecutor is responsible for ensuring that the fugitive is surrendered to the authorities of the requesting State as soon as possible. To this end, the Public Prosecutor will contact his opposite number in the requesting State through Interpol channels or by telephone, to make arrangements concerning the time at and place in which the fugitive will be surrendered to the requesting State, and the manner in which this will be carried out. If air travel is necessary, the requesting State must procure a ticket for the fugitive.

7.2 If the Minister decides to grant the extradition request, the fugitive may object to this decision in summary proceedings before the presiding judge of the District Court of The Hague, which is the seat of the State. In this case, the surrender of the fugitive is usually postponed until judgment has been given, which does not usually take more than a few weeks. If the presiding judge overrules the objection, the surrender of the fugitive may be arranged. If the judge upholds the objection, the Kingdom of the Netherlands is not permitted to surrender the fugitive. The surrender of the fugitive will not be postponed in the event that he lodges an appeal against a judgment overruling the objection.

## **8. NOTIFICATION SUBSEQUENT TO SURRENDER**

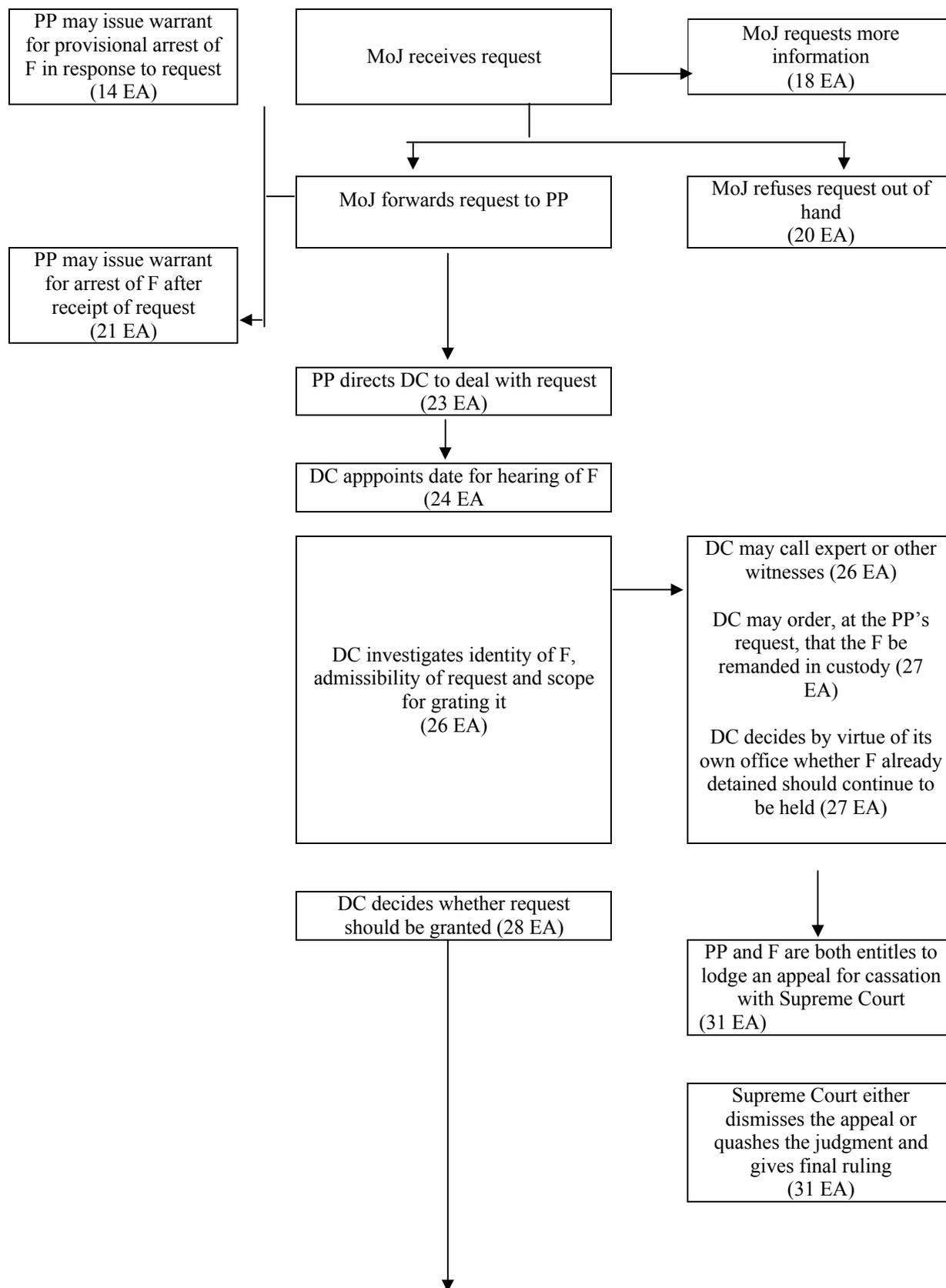
After surrender, the Minister of Justice receives notification from the relevant Public Prosecutor of the time spent by the fugitive in detention prior extradition. The Minister passes this information on to the requesting State.

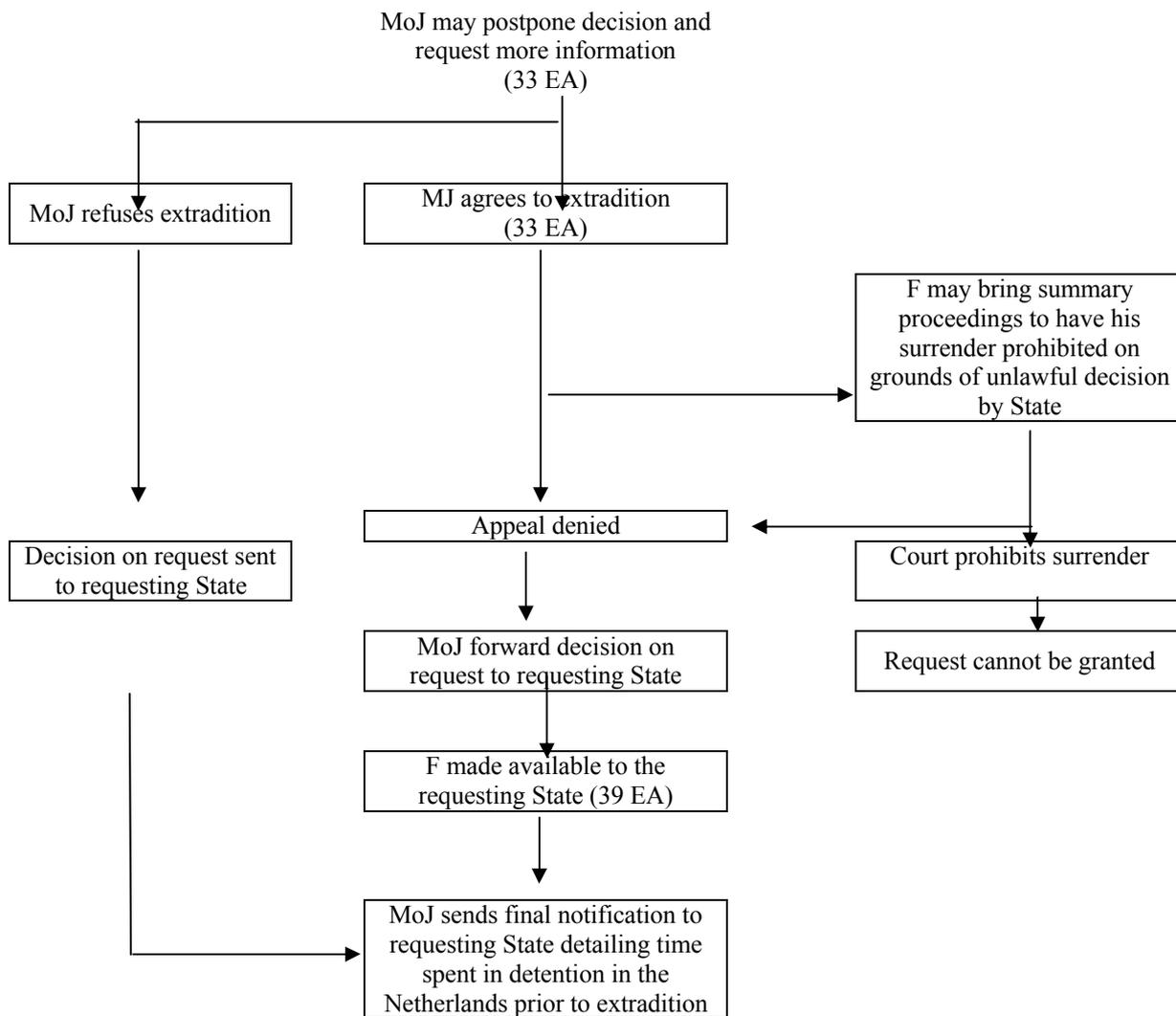
## **9. SHORTENED PROCEDURE**

The Extradition Act of the Netherlands also provides for a 'shortened' procedure. The fugitive may state before an examining magistrate, no later than the day before his hearing at the District Court, that he agrees to immediate extradition without due recourse to the legal process (Sections 41-45 of the Extradition Act). If this option is chosen, the fugitive is in principle no longer entitled to claim the protection afforded by the speciality rule. If the fugitive has stated that he agrees to immediate extradition, the Public Prosecutor contacts his opposite number in the requesting State to arrange the time at and place in which the fugitive will be surrendered to the requesting State, and the manner in which this will be carried out (see also 7.1).

## EXTRADITION REQUESTS MADE TO THE NETHERLANDS

### TYPICAL PATH

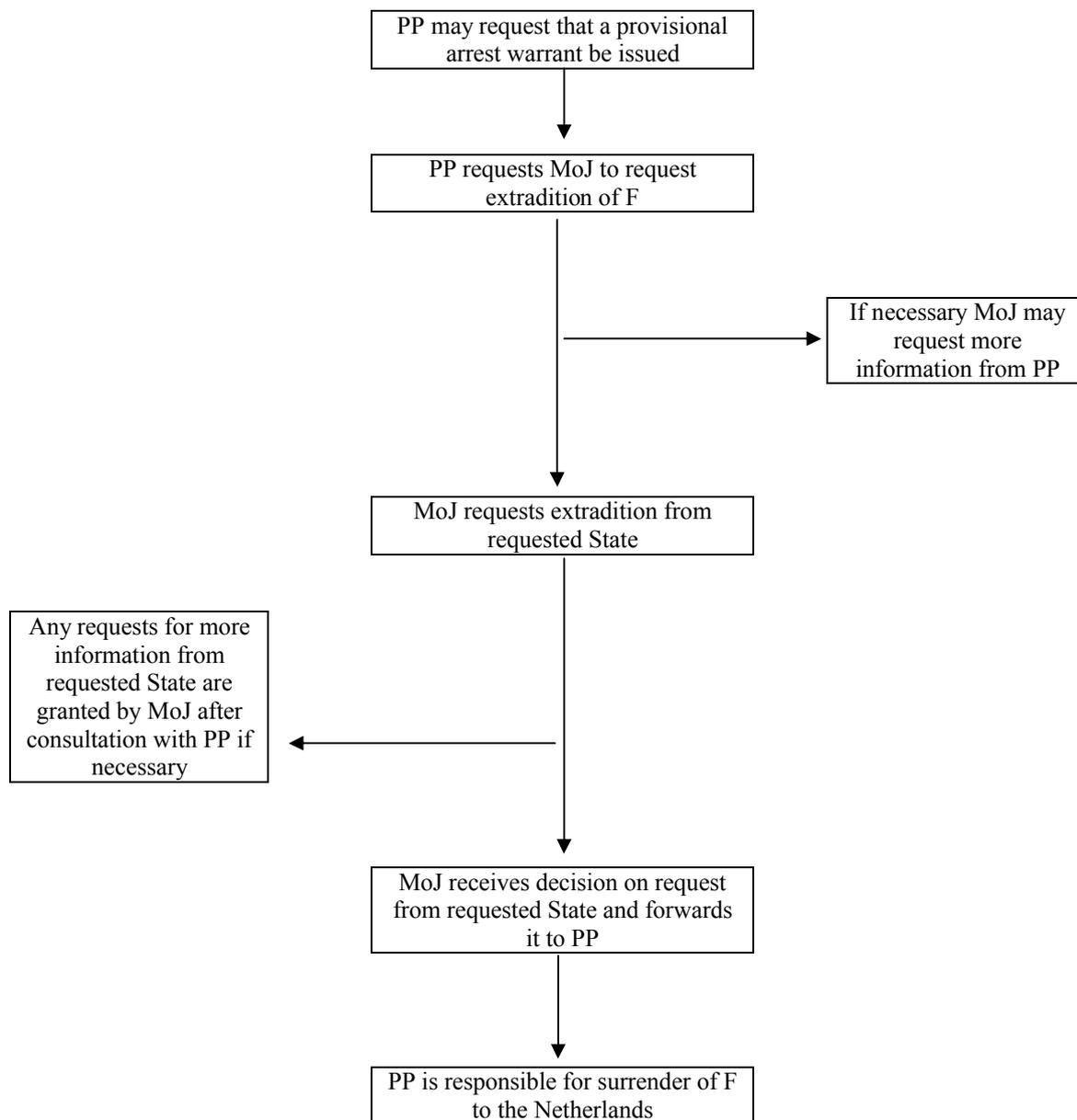




- DC District Court
- EA Extradition Act
- MoJ Minister of Justice
- F Fugitive
- PP Public Prosecutor

## EXTRADITION REQUESTS BY THE NETHERLANDS TO OTHER COUNTRIES

### TYPICAL PATH



MoJ    Minister of Justice  
F      Fugitive  
PP     Public Prosecutor

## **EXTRADITION PROCEDURES IN THE NETHERLANDS**

### **PROCEDURE ADOPTED CONCERNING REQUESTS FOR EXTRADITION ADDRESSED TO THE NETHERLANDS DIRECTIVE TO THE MEMBER STATES OF THE EC WHICH ARE PARTY TO THE TREATY ON EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE KINGDOM OF BELGIUM, THE GRAND DUCHY OF LUXEMBOURG AND THE KINGDOM OF THE NETHERLANDS OF 27 JUNE 1962**

#### **1. PROVISIONAL ARREST AND DEPRIVATION OF LIBERTY**

There is provisional arrest of the fugitive:

— where there are well founded grounds for expecting that a request for extradition which is likely to be granted will shortly be made;

— where the offence could justify provisional detention, where the request concerns the execution of a sentence or of a custodial measure or where the fugitive has no fixed abode or residence in the Netherlands (Article 13 of the Dutch Law on Extradition and Article 15 of the Treaty).

Provisional arrest is made under police warrant (Article 14 of the Law on Extradition). After his provisional arrest, and within 24 hours, the fugitive shall be brought to the police officer who issued the warrant for his provisional arrest (Article 14 of the Law on Extradition). After he has heard the fugitive, the police official may order custody for a period of 48 hours as from the time of provisional arrest. That period may be extended once by 48 hours by the Public Prosecutor (Article 14 of the Law on Extradition). The investigating magistrate may then, at the request of the Public Prosecutor, order the remand in custody of the fugitive (Article 15 of the Law on Extradition).

The duration of the provisional arrest prior to receipt of the official extradition request may not exceed eighteen days (Article 16 of the Law on Extradition and Article 15 of the Treaty).

After receipt of the extradition request, remand in custody of the fugitive may be extended on the Public Prosecutor's order, until the Court rules on the detention (Article 22 of the Law on Extradition)

## **2. THE REQUEST FOR EXTRADITION**

2.1 The request for extradition must be sent in writing by the Minister of Justice of the requesting State to the Dutch Minister of Justice (Article 18 of the Law on Extradition). Considering the provisions applicable to provisional arrest, the request for extradition must be made within the period of time indicated in paragraph 1. It is recommended that the request for extradition should reach the Ministry of Justice in The Hague at least three days before expiry of that period. If, owing to unforeseen circumstances, this is impossible, contact should be made with the Ministry of Justice before the time limit expires.

2.2 The request for extradition must be accompanied by the documents mentioned in Article 11 of the Treaty, provided:

— that the copy of the sentence passed on the fugitive, or of the warrant for his arrest is properly authenticated and that the judgment is clearly enforceable;

— that the part of the sentence already served must be specified;

— that the summary of the facts must indicate that the offence in question is punishable by the law of both States. The summary of the facts need not necessarily be in a separate document; it is sufficient that the judgment or the warrant enclosed with the request for extradition contains a clear summary of the facts;

— that the legal provisions which are applicable are accompanied, where appropriate, by the articles of the law concerning any attempted offences, as well as the table showing, for example, that the narcotic drug involved is a narcotic drug according to the law of the requesting State.

## **3. MINISTERIAL DECISIONS PRIOR TO JUDICIAL PROCEEDINGS**

— The Minister of Justice may, before forwarding to the Public Prosecutor the request for extradition, ask for additional information or amendments to the request. The Minister shall set a time limit for receipt of such additional information or amended request which the requesting State is obliged to observe (Article 19 of the Law on Extradition).

— The Minister of Justice rejects the request outright if it is clear, as soon as it is received, that it cannot be granted (Article 20 of the Law on Extradition).

## **4. FORWARDING THE REQUEST FOR EXTRADITION TO THE PUBLIC PROSECUTOR**

The Minister of Justice forwards the request for extradition to the relevant Public Prosecutor (Article 20 of the Law on Extradition). The Public Prosecutor may, upon receipt of the extradition request, order the arrest of the fugitive if the latter is not already under provisional arrest (Article 21 of the Law on Extradition). It is therefore important that the believed whereabouts or place of residence of the fugitive should be given as precisely as possible both in the request for extradition and in the request for provisional arrest. On or before the third day

following the receipt of the extradition request, the Public Prosecutor shall direct the Court, in writing, to consider the request (Article 23 of the Law on Extradition).

## **5. CONSIDERATION BY THE JUDGE OF THE EXTRADITION REQUEST**

5.1 Upon receipt of the Public Prosecutor's request, the Court sets a date on which the fugitive shall be heard. At the hearing, the Court checks the identity of the fugitive, whether or not the extradition request is admissible and the scope for granting it (Article 25 of the Law on Extradition). The judge may declare that the extradition is inadmissible on the following grounds, provided they are laid down in the relevant Treaty (Article 28 of the Law on Extradition):

- the documents submitted are inadequate (Article 28 of the Law on Extradition);
- the offences are not punishable both in the requesting and in the requested State (Article 5 of the Law on Extradition);
- the fugitive is of Dutch nationality (Article 4 of the Law on Extradition);
- a political offence or an offence related thereto is involved (Article 11 of the Law on Extradition);
- a fiscal offence is involved, unless specifically otherwise provided in a treaty (Article 11 of the Law on Extradition);
- the principle “ne bis in idem” applies (Article 9 of the Law on Extradition);
- the time limit has expired (Article 9 of the Law on Extradition).

The Court may also declare the extradition inadmissible where the fugitive, immediately and without there being a need for further enquiry, can show that he is not guilty of the offences in respect of which his extradition is requested (Article 28 of the Law on Extradition).

Once the case has been heard and the hearing is concluded, the Court rules within fourteen days. The Court may declare the extradition wholly or partly admissible or inadmissible (Article 28 of the Law on Extradition). The Court immediately sends a certified copy of the ruling to the Minister of Justice. Where the Court declared the extradition wholly or partly admissible, it advises the Minister as to the way in which the extradition request should be handled (Article 30 of the Law on Extradition). In the advice it gives the Minister, the Court may take into account circumstances, for example, humanitarian grounds, which, though they have not led it to declare the extradition inadmissible on one of the above grounds, may nevertheless induce the Minister to refuse extradition.

5.2 The Court also rules as to whether the fugitive held in custody with a view to extradition should remain in custody.

5.3 Both the Public Prosecutor and the fugitive may, within fourteen days, appeal to the Supreme Court for the Court's decision to be quashed. The Supreme Court may reject the appeal or quash the Court's decision in full or in part and give a final ruling on the matter. The Court immediately sends an authenticated copy of its judgment together with the relevant file to the Minister of Justice (Article 31 of the Law on Extradition).

## **6. DECISION OF THE MINISTER OF JUSTICE CONCERNING AN EXTRADITION REQUEST**

Upon receipt of the Court's decision and of the file, the Minister of Justice makes a decision on the request for extradition as promptly as possible (Article 33 of the Law on Extradition);

— If the extradition was declared inadmissible by the judge, the Minister is bound to reject the extradition request. If the extradition was declared inadmissible by the judge on the sole ground that the documents produced were inadequate, the Minister may postpone his decision in order to give the competent authorities in the requesting State the opportunity to produce new documents within a time limit set by him. Where the Minister considers it necessary to request further documents and these are not produced within the time limit, the Minister shall refuse the request for extradition (Article 33 of the Law on Extradition). If the Minister receives the additional information sought within the time limit, he may, where it was a case of inadequate documents, submit the request once again to the judge (Article 34 of the Law on Extradition); where the new documents were deemed necessary for a well-founded decision to be made, the Minister may now make his own decision.

— The Minister of Justice may refuse an extradition ruled admissible by the judge, in the following circumstances:

1. Where the offence for which extradition is requested is punishable by death according to the law of the requesting State and the Minister considers that there are no adequate guarantees that the death sentence, if it is or could be passed, shall not be carried out (Article 8 of the Law on Extradition);

2. Where the Minister considers that there are well-founded grounds to suppose that, after his extradition, the fugitive shall be persecuted, punished or made to suffer in any other way because of his religious or political convictions, his nationality, his race or the ethnic group to which he belongs (Article 10 of the Law on Extradition);

3. Where extradition has been granted to a third State (Article 35 of the Law on Extradition);

4. Where criminal proceedings have been introduced in the Netherlands against the fugitive for the same offence as the one for which extradition is requested (Article 9 of the Law on Extradition);

5. Where the offence, in respect of which the request was made, was committed outside the territory of the requesting State (Article 6 of the Law on Extradition);

6. Where the fugitive is in the Netherlands as a result of extradition by a third State, and that State does not agree to the person being re-extradited;

7. Where the fugitive is a Dutch national (Article 5 of the Treaty).

## **7. SURRENDER OF THE EXTRADITED PERSON**

7.1 A copy of the decision of the Ministry of Justice is sent to the requesting State. If extradition is wholly or partly granted, the Public Prosecutor ensures that the fugitive is made available as quickly as possible to the authorities of the requesting State. To that end, the Public Prosecutor will contact his opposite number in the requesting State, through Interpol or by telephone, to settle the place and date of surrender of the fugitive to the requesting State and the manner in which this will be carried out. If air travel is necessary, the requesting State must supply a ticket for the fugitive.

7.2 If the fugitive introduces an application to be heard in chambers by the presiding judge of the District Court at The Hague, seat of the Dutch State, against the Minister's decision to authorise extradition, the surrender of the fugitive is normally postponed until the presiding judge has ruled. These proceedings do not normally take more than a few weeks. If the presiding judge of the District Court rejects the application, the fugitive may be surrendered. If he upholds the application, the Dutch State is not authorised to extradite the fugitive. An appeal lodged by the fugitive where the objection has been overruled does not postpone the extradition.

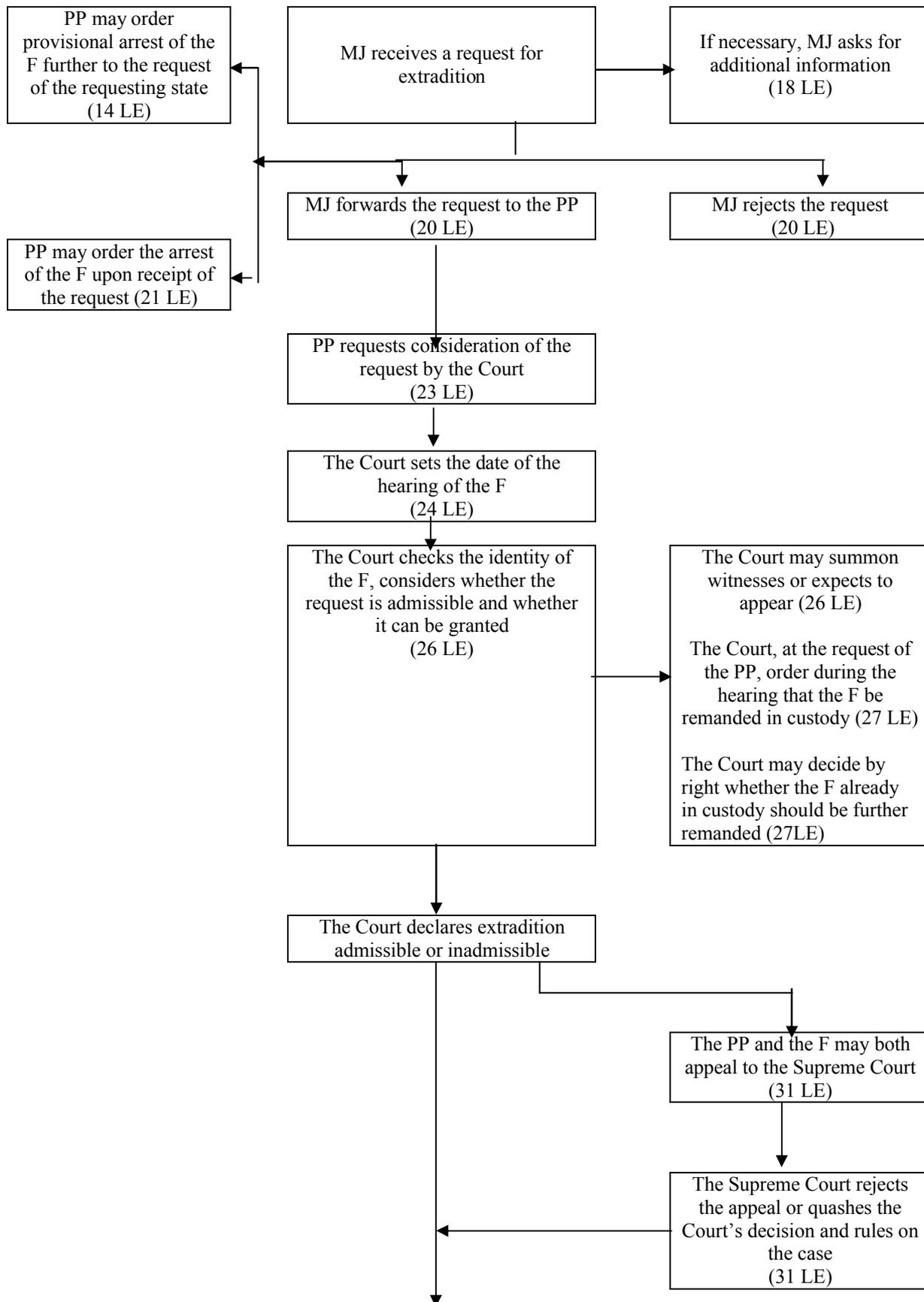
## **8. REPORT CONCERNING THE EXECUTION OF THE EXTRADITION**

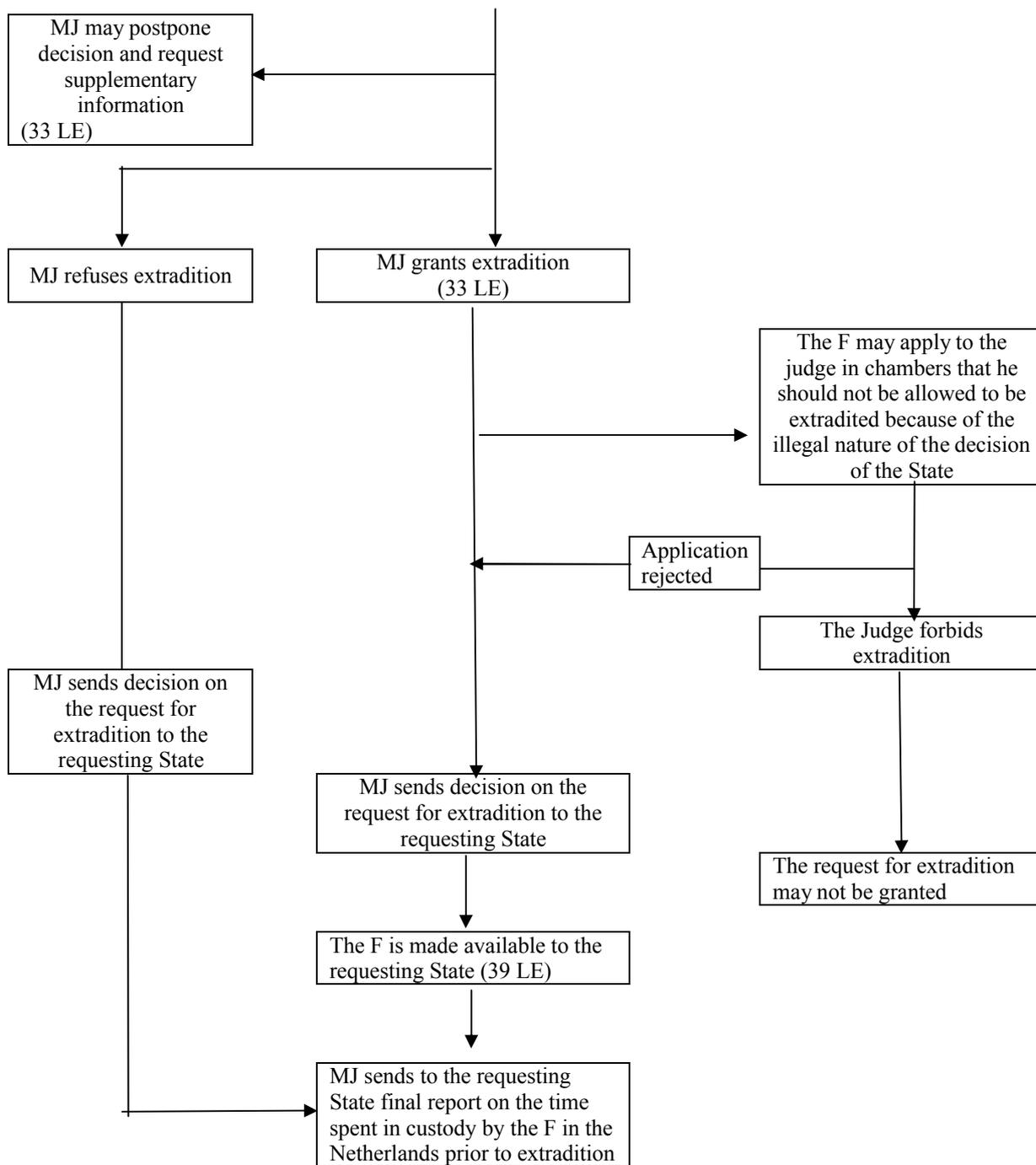
Once the fugitive has been surrendered, the Public Prosecutor notifies the Minister of Justice of the time spent in custody by the fugitive prior to extradition. The Minister forwards this information to the requesting State.

## **9. SHORTENED PROCEDURE**

The Dutch Law on Extradition, similar to the Treaty, makes provision for a "shortened" procedure according to which the fugitive may, not later than the day before his Court hearing, declare in front of a representative of the Public Prosecutor's Office that he agrees to his immediate extradition without due recourse to the legal process (Article 41 to 45 of the Law on Extradition and Article 19 of the Treaty). Where this method is applied the fugitive may no longer, in principle, claim the protection afforded by the speciality rule. Once the fugitive has agreed to immediate extradition, the Public Prosecutor contacts his opposite number in the requesting State to arrange the place and the date of surrender of the fugitive to the requesting State and the manner in which this will be carried out (see above under 7.1).

**EXTRADITION REQUESTS MADE TO THE NETHERLANDS  
TYPICAL PATH**

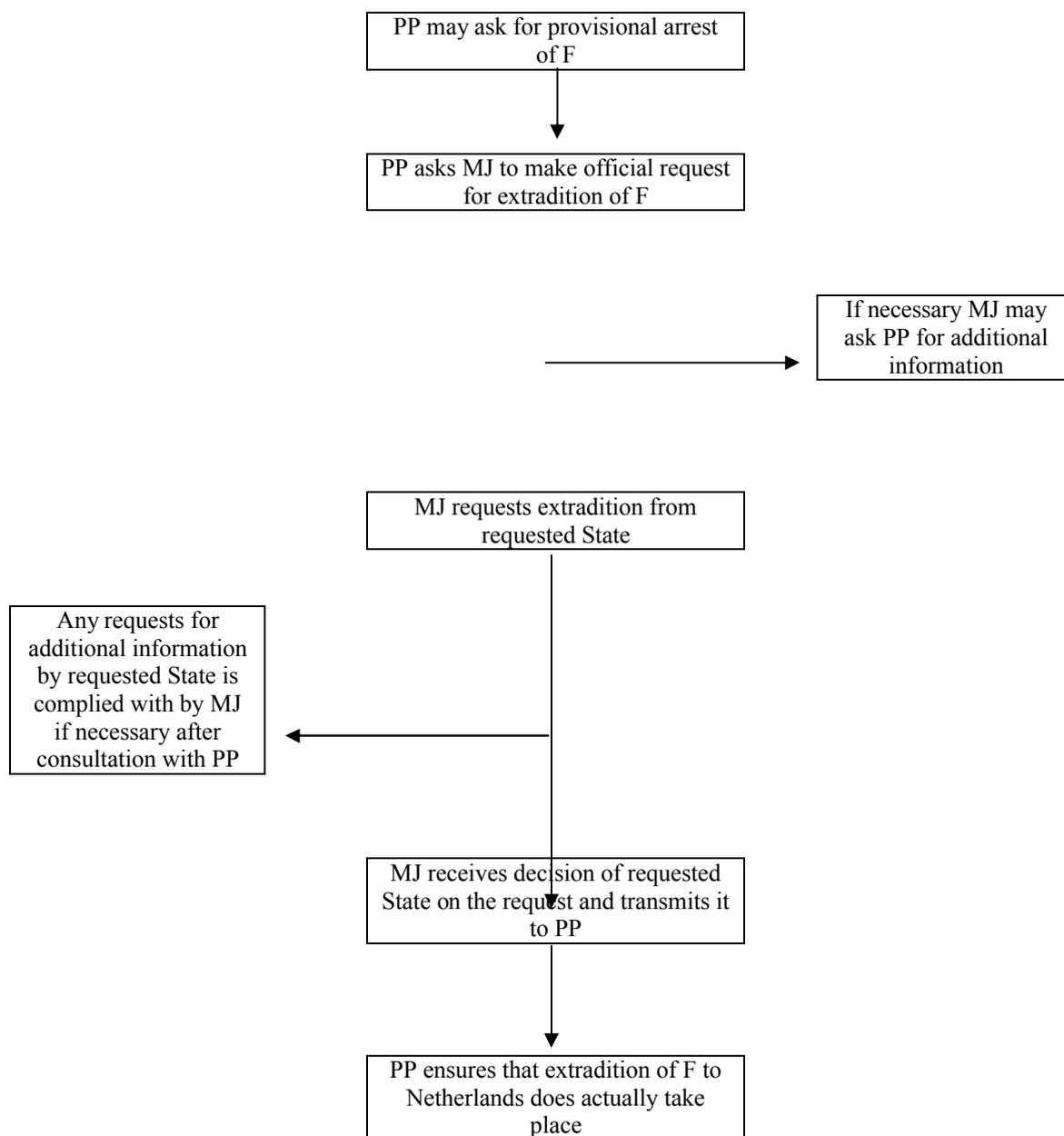




LE Law on Extradition  
 MJ Minister of Justice  
 PP : Public Prosecutor  
 F Fugitive

**REQUESTS FOR EXTRADITION MADE BY  
THE NETHERLANDS TO FOREIGN COUNTRIES**

**TYPICAL PATH**



MJ     Minister of Justice  
PC :   Person claimed  
F       Fugitive



**NORWAY**

(Not available on Internet)



## POLAND

### Extradition procedure in the Republic of Poland

Poland has been a party to the European Convention on Extradition and its two protocols since 13 September 1993.

It has also concluded a number of bilateral extradition agreements with Eastern European Countries which have not signed that convention.

Depending on the stage of criminal proceedings, applications for extradition are made by:

1. the prosecuting authorities - at the preparatory stage of the proceedings
2. the courts - at the judicial stage.

A preliminary examination of applications is carried out by the Prosecution Department in the Ministry of Justice in cases covered by 1, and by the Department of International Co-operation and European Law in the Ministry of Justice in cases covered by 2.

If the requested state party to the Convention requires that application be made through diplomatic channels, the Ministry of Justice proceeds through the Ministry of Foreign Affairs. Measures aimed at physical detention of the accused are carried out by the Detention Office of the General Police Directorate, in co-operation with the National Office of Interpol.

#### Procedure for extradition to Poland from a foreign country

The application for extradition to Poland from a foreign state of a person who is the subject of court proceedings (is accused of an offence) is submitted to the Principal State Prosecutor (Ministry of Justice) by the prosecutor in charge of the case or responsible for supervising application of the criminal procedure by the police. It is accompanied by a copy of the remand order and a document detailing the circumstances of the case and the grounds for prosecution. If the person has already been convicted, a copy of the sentence is attached.

In urgent cases, the court or the prosecutor may contact the appropriate foreign authority directly, asking it provisionally to detain or hold in police custody the person they wish to extradite. The application is then sent at once to the Principal State Prosecutor.

If the foreign state extradites the accused only on condition that the death penalty will not be imposed, then that penalty will not be enforced if he is found guilty. If it has already been imposed, it is not carried out, and is commuted to 25 years' imprisonment. This principle is laid down in the Code of Criminal Procedure (Articles 526 and 527), and it is thus unnecessary to ask the Polish authorities for further declarations and undertakings regarding extradition.

If a person extradited by a foreign state remains on Polish territory without good reason for one month following lawful completion of the proceedings or, if he is convicted, for two months following completion or annulment of the sentence, or if he returns to Poland after leaving, then statutory limitations do not apply.

A copy of the judgment given in a case concerning a person extradited by a foreign country is sent by the court, via the Ministry of Justice, to the relevant authority in that country.

Unlawfully acquired items and real evidence are returned to the country which submitted them, if this was a condition of extradition.

#### Procedure for applications to extradite suspected or accused persons submitted by foreign authorities

Where a foreign authority applies for the extradition of an accused person for trial or enforcement of a sentence, the prosecutor questions that person and, if necessary, seizes evidence located on Polish territory and refers the case to the competent provincial court. That court gives its opinion on the application at a hearing which both the accused and his lawyer are entitled to attend.

The court sends its opinion and the relevant files to the Principal State Prosecutor, who takes the final decision on the application and notifies it to the foreign authority.

Polish citizens and persons granted asylum in Poland are not handed over to foreign authorities.

The court may order detention on remand of a person who has committed an extraditable offence, both before and after submission of an official request for extradition. In the latter case, detention may last for one month, if the foreign authority officially states that the person named in the application has been convicted of an offence or that a warrant has been issued for his arrest. He is released if extradition is refused or if the request for extradition or detention on remand is withdrawn.

The following officials in the Ministry of Justice are responsible for implementing the Convention on Extradition:

1. Prosecutor's Department - Mr Kornel Socha (prosecutor) - tel./fax 622 08 77, Head of Legal Relations with Foreign Countries Section.
2. International Co-operation and European Law Department - Judge Katarzyna Biernacka - tel. 628 44 31, ext. 246 (Head of International Law Section), Judge Marek Regulski, tel. 628 44 31, ext. 445, Anna Zalewska-Pitkowska (prosecutor), tel. 628 44 31, ext. 445.

# PORTUGAL

## Extradition procedures in PORTUGAL

### TYPICAL PATH OF AN INCOMING REQUEST AND GUIDANCE NOTES

#### 1. Contents of the request

Requests shall indicate:

- a) the requesting as well as the requested authority, even if the indication of the latter may be in general terms;
- b) the object of and the reasons for the request;
- c) the legal qualification of the facts on the grounds of which the request is made;
- d) the identification of the fugitive;
- e) a description of the facts, including time and place thereof;

#### 2. Appendices to the request

- f) the warrant of arrest for the fugitive issued by the competent authority and a certificate or an authenticated copy of the decision ordering the issue of the warrant of arrest in the case of extradition with a view to criminal proceedings;
- g) a certificate or an authenticated copy of the conviction and sentence, in the case of extradition for the purpose of serving a sentence, as well as a statement specifying the duration of the remainder of the sentence, if that duration does not correspond to the duration stated in the sentence;
- h) a copy of the legal provisions which apply including, if applicable, those relating to the conditions under which the person becomes immune from prosecution or punishment due to a lapse of time, and those relating to the possibility of an appeal, or to the possibility of a new trial in the case of a sentence rendered in absentia;
- i) if applicable, a statement by the competent authority concerning any facts that, according to the law of the requesting State, have suspended or interrupted the calculation of time (in relation to the lapse of time);
- j) any other relevant documents.

## Notes

1. Authentication of the documents shall not be required.
2. Where the request is incomplete or is formally irregular, the Portuguese authority may ask for further information, indicating a deadline for the reception of the missing elements.
3. At present, the reception of any information complementary to the formal extradition request is accepted by fax due to the urgent nature of the procedure.
4. Exceptions to extradition are based on the following grounds:
  - \_ the offences were committed within the Portuguese territory;
  - \_ the fugitive holds Portuguese nationality;
  - \_ the proceedings have not complied with the guarantees required by the international law which applies;
  - \_ there are well-founded reasons to believe that co-operation is sought for the purpose of persecuting or punishing the fugitive on grounds of discrimination or that such grounds risk aggravating that person's situation;
  - \_ the judgment has been rendered by a special court;
  - \_ the offences carry the death penalty or life imprisonment under the law of the requesting State;
  - \_ extradition is sought in relation to a political offence;
  - \_ extradition is sought in relation to a military offence;
  - \_ the principle ne bis in idem applies due to the termination of the proceedings previously initiated in relation to the same offences in Portugal or in a third country;
  - \_ lack of reciprocity, except for a limited number of cases laid down in the law.
5. Extradition may also be refused on the following optional grounds:
  - \_ the offences that substantiate the request are, either under investigation at pending criminal proceedings, or should, or may be, subject to investigations under criminal proceedings for which a Portuguese judicial authority has jurisdiction;
  - \_ reasons of a personal nature, such as the fugitive's age, health or other personal reasons which might entail serious consequences for that person should extradition be granted.

## **TYPICAL PATH OF THE EXTRADITION PROCEDURE**

### **1. Provisional arrest**

— The person is arrested by the criminal police on the basis of the warrant of arrest internationally notified (through Interpol).

— The person is brought before the judge, by the Public Prosecutor within 24 hours.

### **2. Administrative procedure**

The extradition procedure in relation to an incoming request consists of two stages: first, an administrative stage under the competence of the Government; secondly, a judicial stage under the competence of the Tribunal da Relação (a court of second instance).

The administrative stage of the procedure aims at an assessment of the extradition request by the Government for the purpose of deciding on the basis of political reasons, or on discretionary grounds, whether the request is admissible or not.

The judicial stage remains under the exclusive competence of the Tribunal da Relação (court of second instance), which shall undertake a legal assessment of the form and substance of the offences in relation to the legal requirements for the purpose of deciding whether extradition shall be granted or not; no evidence on the alleged conduct of the person claimed shall be taken into consideration.

— The formal extradition request must be received within 18-40 days.  
The request is received either through the diplomatic channel or through the Ministry of Justice.

— The request is sent to the Attorney General's Office.

— The Attorney General's Office within 20 days:  
assesses the formal aspects of the request and, if deemed necessary, provides for the regularisation of the request;  
instructs the competent criminal police authorities to keep the fugitive under surveillance.

— When the request is in order, the Attorney General produces an opinion and sends it along with the request to the Minister.

— The Government decides on the request within the next 10 days (at present the decision is delivered by the Minister of Justice on the basis of delegated powers conferred upon him by virtue of a Government's resolution).

— Request declared inadmissible: the procedure shall be discontinued without any subsequent formality.

— Request declared admissible: it shall be forwarded immediately through the Attorney General's Office to the Chief Public Prosecutor in the Tribunal da Relação in whose area of jurisdiction the fugitive resides or is found at the time of the request.

**This stage is concluded within 60 days following the day of the arrest**

### 3. Judicial procedure

— The Public Prosecutor implements the judicial procedure within 48 hours.

— The judge receives the request and hears the fugitive. The appointment of a legal counsel, as well as an interpreter, is obligatory on that occasion.

— **The fugitive:**

**a) gives his/her consent to being extradited and surrendered** to the requesting State through a declaration made in writing before the judge, it being signed by that person and by his/her legal counsel.

The consent waives the right to the judicial procedure and, after being ratified by the judge, becomes irrevocable.

The judge ratifies the declaration and issues an order for the surrender of the fugitive.

The judicial act of ratification is equivalent to a final decision in the extradition procedure.

**b) objects to his/her extradition:**

Only the following grounds for objection shall be admitted: (a) the person detained claims not to be the fugitive or (b) the person detained claims that one or more prerequisites for extradition have not been satisfied.

Within 15 days the evidence is submitted in the presence of the person concerned, his/her counsel, an interpreter (if necessary) and the Public Prosecutor.

Submissions may be produced by the Public Prosecutor and the counsel. To that effect each may hold the file for a period of no longer than 3 days.

Court decision.

**This stage is concluded within 65 days from the day the request has been referred to the court.**

Appeal: Both the Public Prosecutor and the fugitive have the right to make an appeal to the Supreme Court of Justice within 8 days.

**The final decision must be delivered within 80 days from the date of lodging the appeal.**

NB. This is the usual procedure within the judicial courts. However, an appeal may also be lodged with the Constitutional Court.

#### 4. Surrender

After the final decision granting extradition the court issues an order to surrender the fugitive to Interpol.

The surrender takes place within 20 days from the day the judgment has been disposed of by agreement of the parties concerned. Under certain conditions this deadline can be extended

#### **FLOW CHART OF AN OUTGOING REQUEST**

— With a view to the provisional arrest of the fugitive, the warrant of arrest is sent to INTERPOL for international transmission, by the Public Prosecutor, duly authorised by the Attorney General.

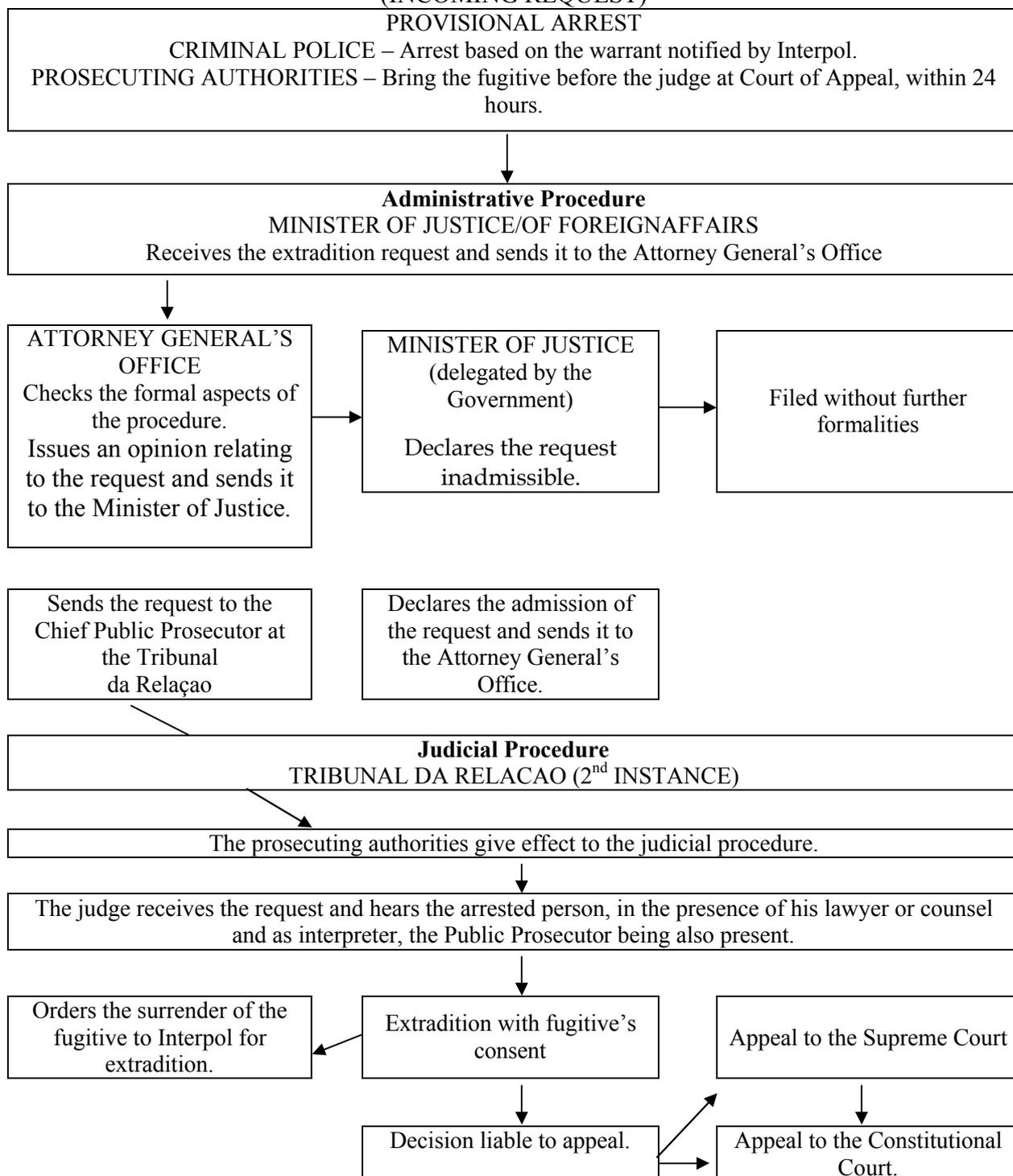
— The extradition procedure in relation to an outgoing request originates in the Court of First Instance where criminal proceedings are pending.

— On the basis of a judicial order, or at his own initiative, the Public Prosecutor at that court sends all the documents and information that are required for the extraordinary request to be issued to the Attorney General's Office.

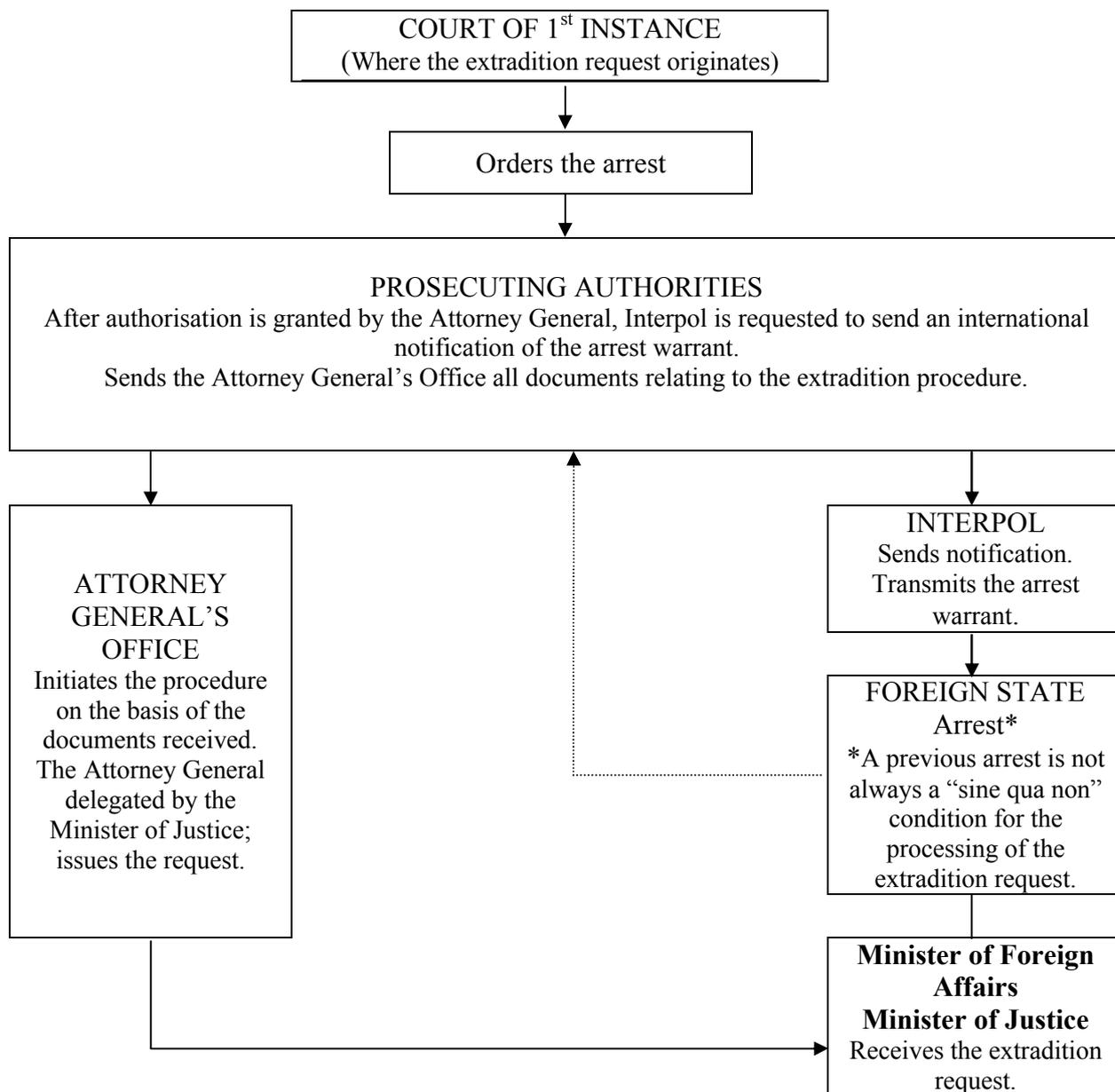
— The Attorney General's Office organises the file on the basis of the documents received.

— The Minister of Justice presents an extradition request to the foreign State in whose territory the fugitive is located is (at present the request is sent directly by the Attorney General on the basis of delegate powers conferred upon him by the Minister of Justice).

**EXTRADITION PROCEDURES IN PORTUGAL**  
**TYPICAL PATH**  
**(INCOMING REQUEST)**



**EXTRADITION PROCEDURES IN PORTUGAL**  
**TYPICAL PATH**  
**(OUTGOING REQUEST)**





**THE RUSSIAN FEDERATION**

(Not available on Internet)



**SLOVAKIA**

(Not available on Internet)



# SPAIN

## EXTRADITION PROCEDURES IN SPAIN

### **I. PASSIVE EXTRADITION**

The procedure for passive extradition in Spain comprises three principle phases:

#### **1. FIRST PHASE (ADMINISTRATIVE)**

In this first administrative phase the documentation for extradition should be followed in the following instances:

— Embassy of the requesting State.

— Presentation of the extradition request to the Ministry of Foreign Affairs. Certain countries are able to transmit documentation on extradition direct to the Ministry of Justice, such as, for example, those who have ratified the Second Additional Protocol to the European Convention on Extradition.

— Ministry of Foreign Affairs forwards the extradition request to the Ministry of Justice.

— Ministry of Justice

— The extradition request for the fugitive, and the arrest warrant issued by the relevant Central Court are forwarded by the police to the Ministry of Justice. The extradition documentation should have reached the Spanish Authorities within forty days of the fugitive's detention. Otherwise, the Judicial Authority will order the release of the fugitive.

— Council of Ministers decides whether to proceed with or suspend the extradition procedure.

#### **2. Second Phase (Judicial)**

If the Council of Ministers decides to proceed with the request for extradition, the latter will move into the judicial phase. The stages are as follows:

– Central Office of the National Court

A second period of forty days is fixed upon the receipt of the documents, to enable the Court to obtain the authority of the Council of Ministers to proceed with the extradition. The extradition documentation and a translation will normally be attached to this authority. There are two possibilities here:

- a) If the fugitive agrees to be extradited, a confirmation document will be sent to the Ministry of Justice, which will also trigger the third phase (administrative).
- b) If the fugitive does not agree to being extradited, his/her case will be referred to the Criminal Chamber of the National Court.

– Criminal Chamber of the National Court

There are two alternatives at this stage:

- 1. Final decision, which will allow the case to proceed to the third (administrative) phase;
- 2. Lodging of an appeal (a single, ordinary appeal) which will be considered by the Criminal Chamber in plenary session.

– Criminal Chamber in plenary session

Pronouncement of the final decision which will trigger the third (administrative) phase.

**3. HIRD Phase (Administrative)**

– Ministry of Justice

If the Ministry decides to proceed with the extradition, the case shall be referred for final consideration by the Council of Ministers.

– Council of Ministers

Agreement to refuse extradition or to surrender the fugitive.

**4. Possible procedural issues**

– The lack of an essential document or necessary information (for example, to ensure dual criminality) can be supplied on request.

– In cases where the extradition request is based on sentences passed in absentia, and in relation to certain countries, some difficulties have arisen when the Spanish judicial authorities have requested guarantees on the fugitive being offered a new trial, in accordance with Article 2, paragraph 3 of the Law on Passive Extradition.

– At the same time, guarantees are sought for the non-implementation of sentences which are contained in the Criminal Law of certain countries, and which are not covered by Spanish law, such as life sentences, enforced manual labour, or sentences which are in excess of the maximum 30 years set out in Spanish law. Moreover, the Spanish judicial authorities, before surrendering the fugitive to the requesting State, can request remand or other prison sentences.

NB. The Spanish Passive Extradition Law of 21 March 1985 contains a detailed description of procedure (Articles 7 to 19).

## **II. ACTIVE EXTRADITION**

During the procedure followed by the Ministry of Justice on extradition documentation, the relevant judicial authority should issue an international arrest warrant which should be transmitted through Interpol. When the fugitive is arrested, Interpol will inform the judicial authority which made the extradition request.

The principle stages to be followed in terms of required documentation in extradition cases are as follows:

### – National or High Court of Justice

The High Court of Justice with jurisdiction, or the Magistrates' Court prepares the documentation which will normally include the sentence to be imposed, the grounds for arrest or arrest warrant, where applicable, rogatory letters, the charge from the Public Prosecutor's Department and the relevant legal statutes.

### – Spanish Ministry of Justice

The documentation received is verified by the Mutual Legal Assistance Division. Where necessary, the relevant legal statutes which had not been sent before, or essential documents which are to be brought before the court are added. This documentation should be translated into the language of the requested country, in accordance with that country's law, or the relevant treaty.

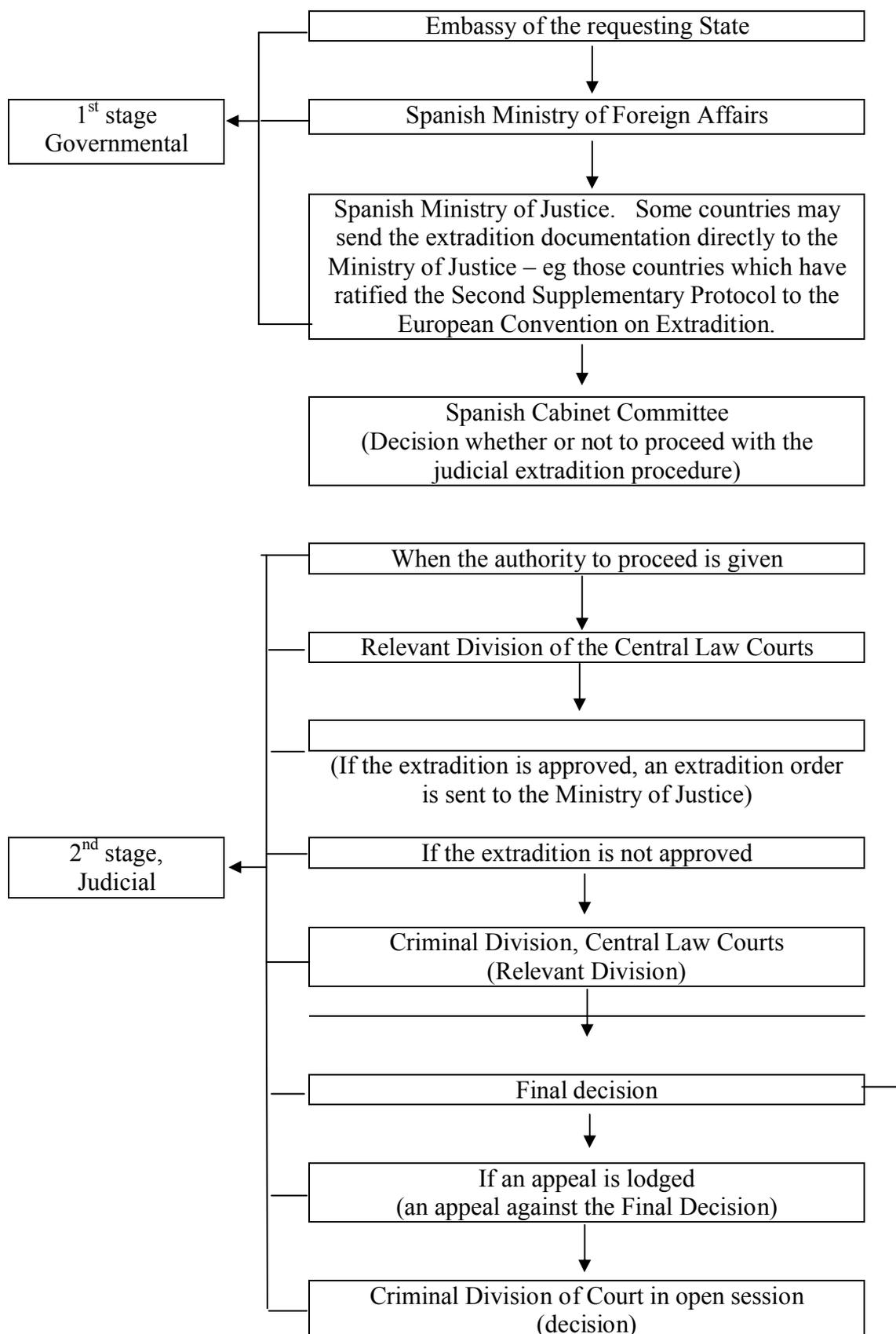
### – Council of Ministers

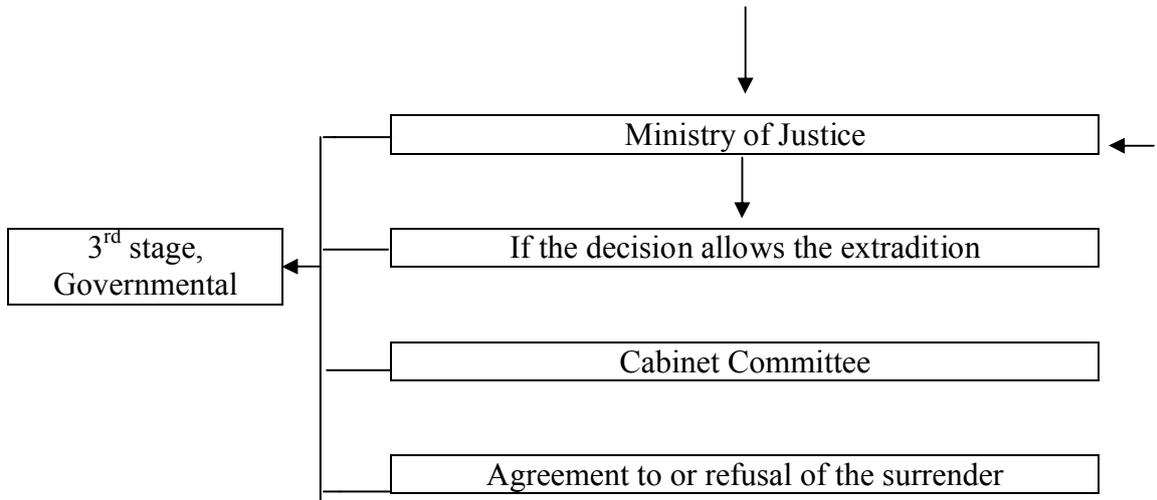
Authority to proceed with the active extradition procedure. This authority will be sent to the Department of Consular Affairs, together with the above-mentioned documentation and translations, as well as to the judicial authorities making the request and Interpol.

### – Ministry of Foreign Affairs

The Department of Consular Affairs will send the request to the relevant authorities.

## PROCEDURE FOR EXTRADITION FROM SPAIN







**SWEDEN**

(Not available on Internet)



# SWITZERLAND

## EXTRADITION PROCEDURE IN SWITZERLAND

### Preliminary remarks

The extradition procedure in Switzerland for people prosecuted or found guilty is governed by the Federal Law on Mutual International Assistance in Criminal Matters of 20 March 1981 (hereinafter EIMP) - more particularly the second part of that law - and by the Decree on Mutual International Assistance in Criminal Matters of 24 February 1982 (hereinafter OEIMP), where international agreements do not provide otherwise (art.1, sub para.1 EIMP). The provisions relating to the extradition procedure contained in the two legislative instruments embody the principles of and complement the European Convention on Extradition of 13 December 1957 (hereinafter ETS24), existing bilateral treaties and the Convention implementing the Schengen Agreement of 19 June 1990.

### Report structure

- I. Request for search and arrest for the purposes of extradition
- II. Formal extradition request
- III. Preliminaries to the extradition decision
- IV. Extradition decision
- V. Right of appeal against the extradition decision
- VI. Execution of extradition

#### **I. Request for search and arrest for the purposes of extradition**

1. As a general rule the requesting State begins the procedure by issuing a **request for search and arrest for the purposes of extraditing** the person prosecuted. Such a request can be made by any central or national Interpol office or by the Ministry of Justice of a foreign State (art.16, para.3 ETS24) and must be sent to the **Federal Office of Justice, Directorate of International Mutual legal assistance, Extradition Section, Bundesrain 20, 3003 Bern**. Provisional arrest is also possible on the basis of a signal under the Schengen search system.

The request must contain the following information (art.16, para.2 ETS24 and relevant Swiss declaration):

- a. the authority issuing the request;
- b. the subject of and reason for the request;

- c. legal details, offences and documentation;
- d. identification, as accurate and complete as possible, of the person prosecuted: surname, first name (other names) (nickname, alias or former name, if any), parents' surname, date and place of birth, nationality, description and, where appropriate, marital status, profession and last known address;
- e. a brief statement of the offences : place, date and mode of operation;
- f. the fact that there is an immediately enforceable sentence or detention order or an arrest warrant or other order having the same effect as well as the date of issue and the name of the authority which issued it;
- g. the intention of the foreign authority to request extradition through official channels if the person being prosecuted is found and arrested.

2. **The Federal Office of Justice** decides whether it is worth pursuing the request for search and arrest for the purposes of extradition (art.16, para.1 ETS24). In particular it **considers** whether:

- a. all the information listed under I.1. has been provided;
- b. the person whose arrest is sought is not Swiss; however, it should be noted that Switzerland may extradite one of its citizens if it is deemed appropriate (Swiss declaration on art.6 ETS24);
- c. the offence of which he or she is accused:
  - gives rise to extradition under Swiss law and that of the requesting country (art.2 ETS24),
  - does not fall within Swiss jurisdiction (art.7 ETS24),
  - does not constitute a political, fiscal or military offence (art.3, paras.1,4 and 5 ETS24, art.3, sub para. 3 EIMP);
- d. the proceedings abroad are not designed to prosecute the person sought or to punish him or her for his or her political opinion, membership of a particular social group or race, religion or nationality (art.3, para.2 ETS24);
- e. the principle non bis in idem is respected (art.9 ETS24 and relevant Swiss declaration);
- f. the time limit has not expired (art.10 ETS24);
- g. any other reason makes the extradition unacceptable (Swiss declaration on arts.1 and 3, paras.3 and 11 ETS24; arts.37 and 40 EIMP).

3. If there are grounds to follow up the request for search and arrest for the purposes of extradition, **the Federal Office of Justice** takes the following measures:

a. If, as most often happens, the place of residence of the person being prosecuted is **unknown**, it communicates the identity of the person in question through the **computerised police search system (RIPOL)**;

b. If, on the other hand, the place of residence of the person prosecuted is **known**, the Federal Office of Justice **orders** the police command of the canton concerned to **arrest him or her** (art.44 EIMP and art.19, sub para.1 OEIMP) and, where necessary, to seize evidence as well as any property or assets relating to the offence (art.45 EIMP); if the person prosecuted is arrested, the police in the canton concerned **notify the Federal Office of Justice immediately** (art.46 EIMP).

4. By order of **the Federal Office of Justice**, the competent authority of the canton concerned **interrogates the person prosecuted**. It verifies that the person arrested in fact corresponds to the person designated in the request for arrest; it informs the person prosecuted of the conditions of extradition and of his or her right to appeal, to obtain legal aid, to receive assistance from a lawyer as well as to communicate with the competent consulate of his or her country of origin. The person prosecuted is also heard briefly to establish his or her personal situation as well as any objections he or she may have to the extradition (art.52 EIMP; arts.16 and 17 OEIMP).

5. In cases where the person prosecuted **agrees to be extradited** immediately, the extradition is carried out in accordance with **a simplified procedure** (art.54, sub para. 1 EIMP and art.18, sub para. 1e OEIMP). The consent of the person prosecuted, recorded in writing, is communicated by the judicial authority of the canton concerned to the Federal Police Office. Following this information, the Federal Police Office may authorise the surrender to the requesting authorities. **The procedure is then closed.**

It should be noted that:

- renunciation of the formal extradition procedure may be revoked as long as the Federal Office of Justice has not decided to surrender the person prosecuted (art.54, sub para.2 EIMP);

- simplified extradition has the **same effects** as extradition and consequently is subject to the same restrictions such as the speciality reservation (art.54, sub para.3 EIMP). However the person prosecuted also has the possibility of renouncing the application of the speciality rule.

6.a. If the person prosecuted **does not agree to be extradited, the Federal Office of Justice** may issue an **arrest warrant with a view to extradition** (art.47, sub para.1 EIMP) and informs the requesting State accordingly.

It should be noted that persons prosecuted may, even if they do not agree to extradition at this stage of the procedure, give their consent to simplified extradition at any time.

6.b. The competent authority in the canton concerned notifies the person prosecuted of the arrest warrant issued with a view to extradition issued by the Federal Office of Justice (art.52, sub para.1 EIMP). The person prosecuted is heard in accordance with the rules set out under I.4. **A written record of the hearing is produced** (art.18, sub para.1 OEIMP).

6.c. The person prosecuted may, within 10 days, appeal against the arrest warrant issued with a view to extradition, **to the Federal Criminal Court**. The decision of the Federal Criminal

Court can be contested by the person prosecuted and the Federal Office of Justice at the Federal Court, but only if the case is of particular importance.

## II. Formal extradition request

1. Following the arrest of the person prosecuted, the requesting State has a period of **18 days**, which may be extended to **40 days** if circumstances so warrant (arts.12 and 16, para.4 ETS24), or the period set by the applicable bilateral treaty to submit the **extradition request** in writing.

The extradition request must be sent through official channels to the **Federal Office of Justice** (art.50, sub para.1 EIMP).

2. The extradition request must:

a. contain the information referred to under I.1.a-d;

b. be accompanied by the following documents:

- the original or an authenticated copy of the **immediately enforceable sentence or detention order** or of the **arrest warrant** or other order having the same effect and issued in accordance with the procedure laid down by the law of the requesting State (art.12, para.2a ETS24),

- a brief statement of the offences (art.12, para.2b ETS24),

- the text of the enactments relevant to the place where the offence was committed (art.12, para.2c ETS24);

c. be submitted in or translated into German, French or Italian (Swiss declaration on art.23 ETS24) or in the language envisaged by the applicable bilateral treaty.

3. **The Federal Office of Justice** considers whether the conditions required for extradition, as listed under I.2, have been fulfilled. It may demand that a request which provides insufficient information be modified or completed (art.13 ETS24).

4.a. If the request and the appendices reach the Federal Office of Justice **in time** and the extradition is **not obviously unacceptable**, the detention of the person prosecuted, for the purposes of extradition, is usually **maintained** for the whole duration of the extradition procedure (art.51, sub para.1 EIMP).

b. If the two conditions referred to under II.3.a. are not met, **the Federal Office of Justice** orders the **immediate release** of the person prosecuted (art.50, sub para.1 EIMP).

## III. Preliminaries to the extradition decision

1. Once the Federal Office of Justice has decided that the extradition request is acceptable, it sends it to the competent authority of the canton concerned. Just as with the arrest warrant, the

authority notifies the person prosecuted of the request and conducts a further hearing in accordance with the rules referred to under I.4 and 6.b.

2. If the person prosecuted does not agree to be extradited, his or her lawyer, if any, is given a short period of time **to substantiate his or her opposition to it.**

3. The person prosecuted can **at any time** make a request to **the Federal Office of Justice** to be released (art.50, sub para. 3 EIMP).

#### **IV. Extradition decision**

1. It is the responsibility of the **Federal Office of Justice** to **agree to or to refuse** extradition (art.55, sub para.1 EIMP).

2. If the person prosecuted claims that he or she is charged with a **political offence** or if a preliminary investigation gives serious grounds for believing that the act for which he or she is held responsible is of a **political nature**, the extradition decision falls within the jurisdiction of the **Federal Criminal Court**, which **hands down a first instance decision** on the basis of the proposal made by the Federal Office of Justice (art.55, sub para.2 EIMP).

#### **V. Right of appeal against the extradition decision**

1. The person prosecuted is notified of the extradition decision.

a. If, in the **5 days** following the date of notification, the person prosecuted states that he or she does not wish to appeal, the extradition is executed (art.56, sub para.1b, EIMP).

b. If the person being prosecuted intends to appeal, he or she has **30 days** from the date of notification to bring **an appeal to the Federal Criminal Court** (art.55, sub para.3 EIMP).

2. The person being prosecuted and the Federal Office may, within 10 days, appeal to the Federal Court against the decision of the Federal Criminal Court, but only if the case is of particular importance.

a. If extradition is **refused**, the **Federal Office of Justice terminates the period of detention** ordered for extradition purposes (art.56, sub para.2 EIMP).

b. If it is **granted**, the **Federal Office of Justice orders** the measures necessary for its **execution.**

## **VI. Execution of extradition**

1. **The Federal Office of Justice** communicates the decision to extradite to the requesting State and informs it of the time and place of execution (art.18, para.3 ETS24).
  
2. If the execution is not postponed, the person being prosecuted is surrendered at the latest after **30 days** (art.18, para.4 ETS24) just as, where applicable, the evidence together with the property and assets seized are handed over (art.22 and art.59, sub para.2 OEIMP). **The extradition procedure is finally closed.**

**TURKEY**

(Not available on Internet)



# UNITED KINGDOM

## EXTRADITION PROCEDURES IN THE UNITED KINGDOM

### A. REQUESTS FOR EXTRADITION MADE TO THE UNITED KINGDOM BY AN EC MEMBER STATE

#### Sources

1. Extradition requests made to the United Kingdom by an EC Member State are, for the most part<sup>1</sup>, governed by the Extradition Act 1989 and the European Convention on Extradition Order 1990 or, in the case of Belgium, the bilateral Extradition Treaty of 1901.

2. The procedure is a combination of the administrative and the judicial, involving separate functions for the Secretary of State, the Crown Prosecution Service and the courts. Scotland has a separate legal jurisdiction from that of the rest of the United Kingdom and deals with its own extradition cases. Broadly speaking, however, the same legislation applies through the United Kingdom. Although neither the Channel Islands nor the Isle of Man forms part of the United Kingdom, fugitives in those jurisdictions are dealt with by Bow Street Magistrate Court.

### 3. The Principal Agencies

#### (a) Judicial level

<b>England and Wales</b>	<b>Scotland</b>
Bow Street Magistrates' Court	Lothian and Borders Sheriff Court
Divisional Court	High Court of Justiciary, Outer and Inner Houses of the Court of Session
House of Lords	House of Lords
Crown Prosecution Service	Crown Office

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<sup>1</sup> This paper does not apply to the special arrangements which apply between the United Kingdom and the Republic of Ireland

The Treasury Solicitor

Solicitor to the Secretary of State

The Crown Prosecution Service is the “prosecuting authority” and acts solely for and in the interests of the requesting State and has no duty to the Home Secretary. The Treasury Solicitor acts for the Home Secretary.

**(b) Executive level**

<b>England and Wales</b>	<b>Scotland</b>
Extradition Squad, New Scotland Yard	Lothian and Borders Police
The Foreign and Commonwealth Office	The Foreign and Commonwealth Office
Nationality, Treaty and Claims Department	Nationality, Treaty and Claims Department
The Home Office	The Scottish Office
The Secretary of State for the Home Department (The Home Secretary)	The Secretary of State for Scotland

In the rest of this paper, we discuss the procedure in England and Wales.

**Commencement of Proceedings**

4. The extradition process begins either with a request through police channels for the provisional arrest of the fugitive or by a formal request submitted through the Diplomatic Channel.

**Provisional Arrest (Emergency procedure)**

5. The provisional arrest procedure is an emergency procedure to facilitate the urgent arrest of a fugitive who is on the move. Information about a fugitive suspected to be in or on his way to England or Wales is sent through Interpol to New Scotland Yard. On receipt of this information a police officer from the extradition squad of the Metropolitan Police presents the information to a Magistrate at Bow Street Magistrates' Court in London with a request for the issue of a provisional warrant for the fugitive's arrest. The officer must present sufficient information for the Magistrate to be able to reach the opinion that, were the fugitive to be wanted in the Magistrate's jurisdiction, he would be justified in issuing an arrest warrant. He must also be satisfied that the matter is urgent and that the offence for which the fugitive is wanted is an extradition crime. Thereafter, it is entirely a matter for the Magistrate whether to issue a warrant.

6. When a warrant is issued, and the fugitive has been arrested, he is brought as soon as possible to Bow Street Magistrates' Court where he is charged. He is then remanded by the Magistrate in custody or on bail pending a formal request for his extradition. In a case where extradition is sought under the European Extradition Convention, the Magistrate sets an initial period, usually of 18 days from arrest, for the receipt by the Home Secretary of the formal request through the Diplomatic Channel. In accordance with Article 16 of the Convention, this

may be extended to up to 40 days from the date of arrest. The court notifies the Home Office of the issue of the warrant and, subsequently, of any period of remand set. The Home Office informs the Foreign Office who in turn inform the Embassy of the country concerned.

7. If the request is not made within the period of remand, or if the requisite supporting documents are not supplied, the fugitive is released immediately. However, he may be re-arrested following the issue of another provisional arrest warrant or, more usually, following a formal request for extradition made through the Diplomatic Channel, the issue of an Authority to Proceed by the Home Secretary and the issue of an arrest warrant (see paragraphs 9 and 10 below).

8. Once the request for extradition has been received at the Home Office, that fact is relayed to Bow Street Magistrates' Court. The Home Office needs time to examine the documents submitted with the request to see whether the requirements of the Extradition Act 1989 and the Convention have been met. There can therefore be a problem if the formal request is received by the Home Office on the last or nearly last day of the 40 day period. When this happens, the Crown Prosecution Service, acting on behalf of the requesting Government, applies to the Court for an adjournment of 7 days to allow documents to be examined and the Authority to Proceed to be issued, if appropriate. On many such occasions, however, the Defence will also apply to the Court for discharge on the basis that the time limit has expired. It is in the discretion of the Magistrate whether or not he grants the extension to the time limit to allow for receipt of the Authority to Proceed. Assuming that such extension of time is granted, and the Home Secretary signs the Authority to Proceed, the Authority and the supporting documents are then sent to Bow Street Magistrates' Court. Copies of the papers are sent to the Crown Prosecution Service and a copy must be served on the fugitive or his legal representative as soon as the Authority to Proceed has been issued. The fugitive has a right to legal representation and to apply for legal aid. The case is not then ready for hearing as both the Prosecution (i.e. the Crown Prosecution Service acting on behalf of the requesting Government) and the Defence will usually wish to consider the documents that have been received. The Crown Prosecution Service may themselves require further documentation from the requesting State. During this time, the defendant will be remanded, either in custody or on bail at the discretion of the Magistrate, from time to time until both sides are ready. Only then can the Court set a date for the committal hearing.

### **Formal Request Cases (Normal Procedure)**

9. Where the case begins with a request through the Diplomatic Channel, the supporting documents are examined by the Home Office. The Crown Prosecution Service will also have the opportunity to see the papers so that they may advise the client state. If the papers are in order, the Home Secretary is invited to issue an Authority to Proceed. The Authority to Proceed and the documents received from the requesting State are then sent to Bow Street Magistrates' Court for the Magistrate to consider and, if appropriate, issue a warrant for arrest. On arrest, the fugitive is brought before the Magistrate where he is remanded on bail or in custody. A copy of the papers is sent to the Crown Prosecution Service and a copy is served on the fugitive or his legal representative. The Prosecution and the Defence have the same opportunity to consider the documents until both sides are ready and the date for committal is set.

10. The fugitive may apply to the Divisional Court for judicial review of the Authority to Proceed, whether that is issued after a formal request or after a provisional arrest; but this rarely happens at this stage.

### **Committal Hearing**

11. At the hearing, the extradition documents are examined. If satisfied that the Authority to Proceed relates to an extradition crime and none of the prohibitions on return applies, the Magistrate is required by the 1989 Act to commit the fugitive to custody, or on bail, to await the Home Secretary's decision on surrender. Where Belgium is the requesting State, the so called prima facie case rule applies.

### **Appeal Rights**

12. Under the 1989 Act, unless he waives the right to apply for a writ of habeas corpus, the fugitive cannot be surrendered for 15 days beginning with the day on which he was committed. Within this period of 15 days he may apply to the Divisional Court for a writ of habeas corpus to secure his discharge. If such an application is made, he cannot be returned to the requesting State whilst the proceedings are pending.

### **Representations**

13. The Home Secretary must give a notice to the fugitive informing him that he is contemplating making an order for his surrender and giving the fugitive the opportunity to make representations within the period of 15 days beginning with the date of the notice as to why he should not be extradited. Unless the fugitive waives his right to make such representations, no order for his return can be made during that period.

### **Order for Return**

14. The case, including any representations made by the fugitive, is then considered by the Home Secretary. Where he signs an order for the fugitive's return, the fugitive cannot be surrendered for 7 days beginning with the date the order is issued, unless he waives his right to appeal and consents to surrender (see paragraph 15). During that period, the fugitive may apply to the Divisional Court for leave to apply for judicial review of the decision to make the order. If an application is made, the fugitive cannot be surrendered while the proceedings are pending.

### **Simplified Procedure**

15. The fugitive may at any stage waive his rights to a full extradition hearing or to an appeal to the Divisional Courts, and may consent to his return. In that event, the Home Secretary orders the fugitive to be surrendered as soon as possible, in practice often within one month of the Magistrate's committal order being made.

**B. Requests for Extradition made by the United Kingdom Government for the Return of Fugitives from abroad**

16. Extradition requests made by the United Kingdom Government for the return of fugitives from abroad originate from the Crown Prosecution Service, the Serious Fraud Office, or HM Customs and Excise.

17. In European Convention cases, a warrant of arrest is obtained by the police and sent to the prosecutor, who prepares the papers to comply with the Extradition Act 1989 and the Convention. In Belgian cases, the police obtain a first instance warrant and the prosecutor obtains the evidence and statements to comply with Schedule 1 to the 1989 Act and the Treaty. Witnesses are brought before the Court to swear their statements. The paperwork is then presented to the Magistrate who issues an extradition warrant and signs a jurat. A provisional arrest request may be made in either case through the police channel.

18. The documents to be sent in support of the request are submitted to the Home Office for authentication and are then forwarded through the Diplomatic Channel to the requested state. When the fugitive is ready for collection, the Home Office is notified by the Foreign and Commonwealth Office and the prosecutor is informed. The prosecutor is responsible for making the arrangements for the collection of the fugitive. A letter of introduction is prepared by the Home Office for the officers travelling abroad to bring back the fugitive and the travel details are given to the Foreign and Commonwealth Office. On his return to the United Kingdom, the fugitive is dealt with in the United Kingdom courts in the same way as any other accused person.

## **Additional Notes**

### **Surrender**

The fugitive must be surrendered:

- within 2 months of committal, if he does not appeal;
- within 1 month of the issue of a surrender warrant, unless he applies for judicial review of the order for surrender;
- within 1 month of the end of judicial review proceedings;
- within 1 month if he waives his rights and consents to his return.

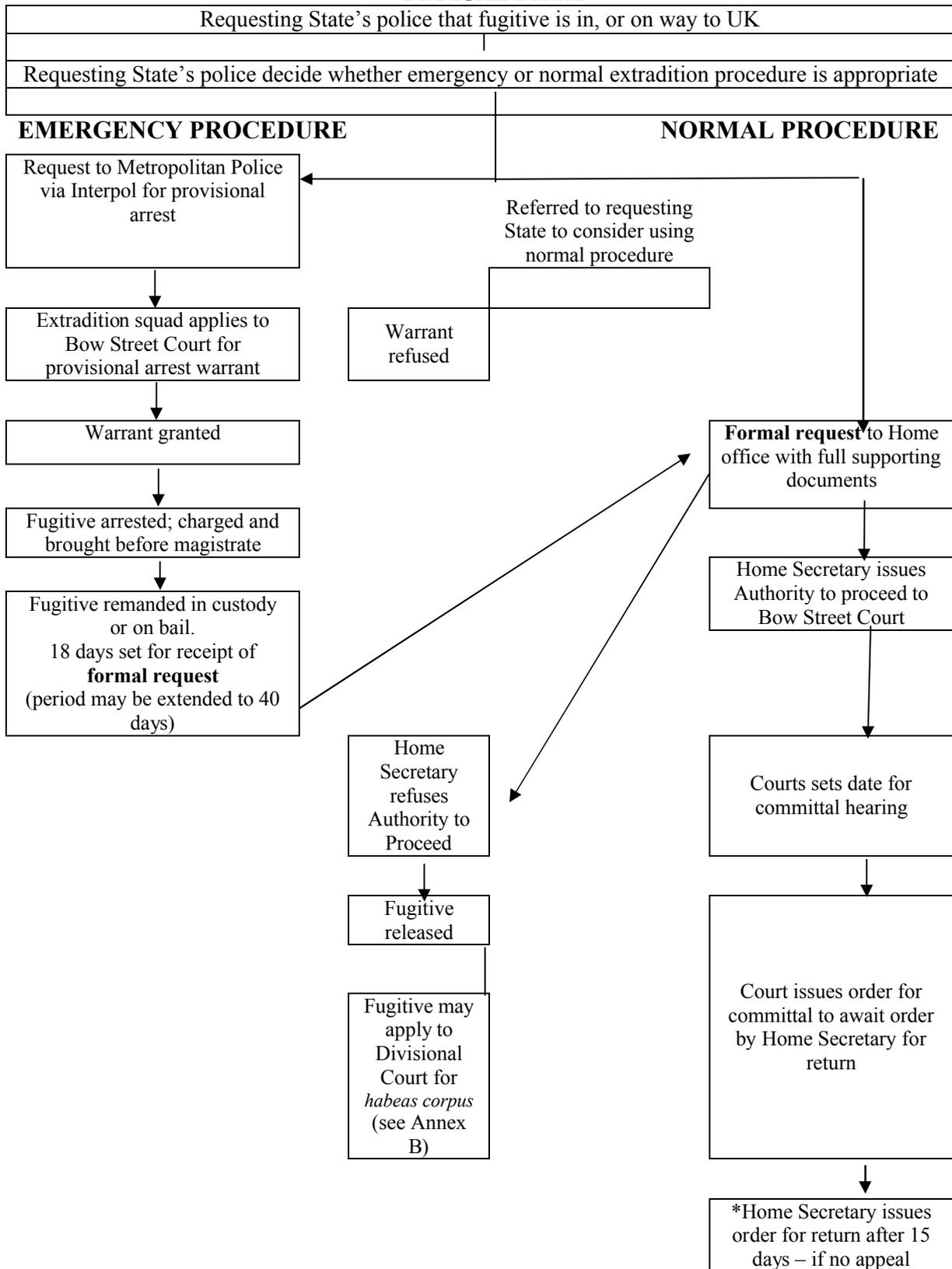
### **Bail**

The grant of bail at any stage in extradition proceedings is entirely within the court's discretion. (There is no presumption in favour of bail where a fugitive is concerned.) Before committal, however, the Magistrate may (and often does) grant bail to a fugitive who is settled in the United Kingdom, depending on the circumstances and the seriousness of the offence.

### **European Convention on Human Rights**

A fugitive may complain that the Convention would be violated if the United Kingdom extradites him. A complaint is considered only after all domestic remedies have failed. The complaint is initially considered by the European Commission on Human Rights who may request a delay on surrender while they consider observations on admissibility and the merits of the case and pending any oral hearing in Strasbourg.

**REQUEST FOR EXTRADITION FROM ENGLAND AND WALES  
BY EC MEMBER STATES  
TYPICAL PATH**



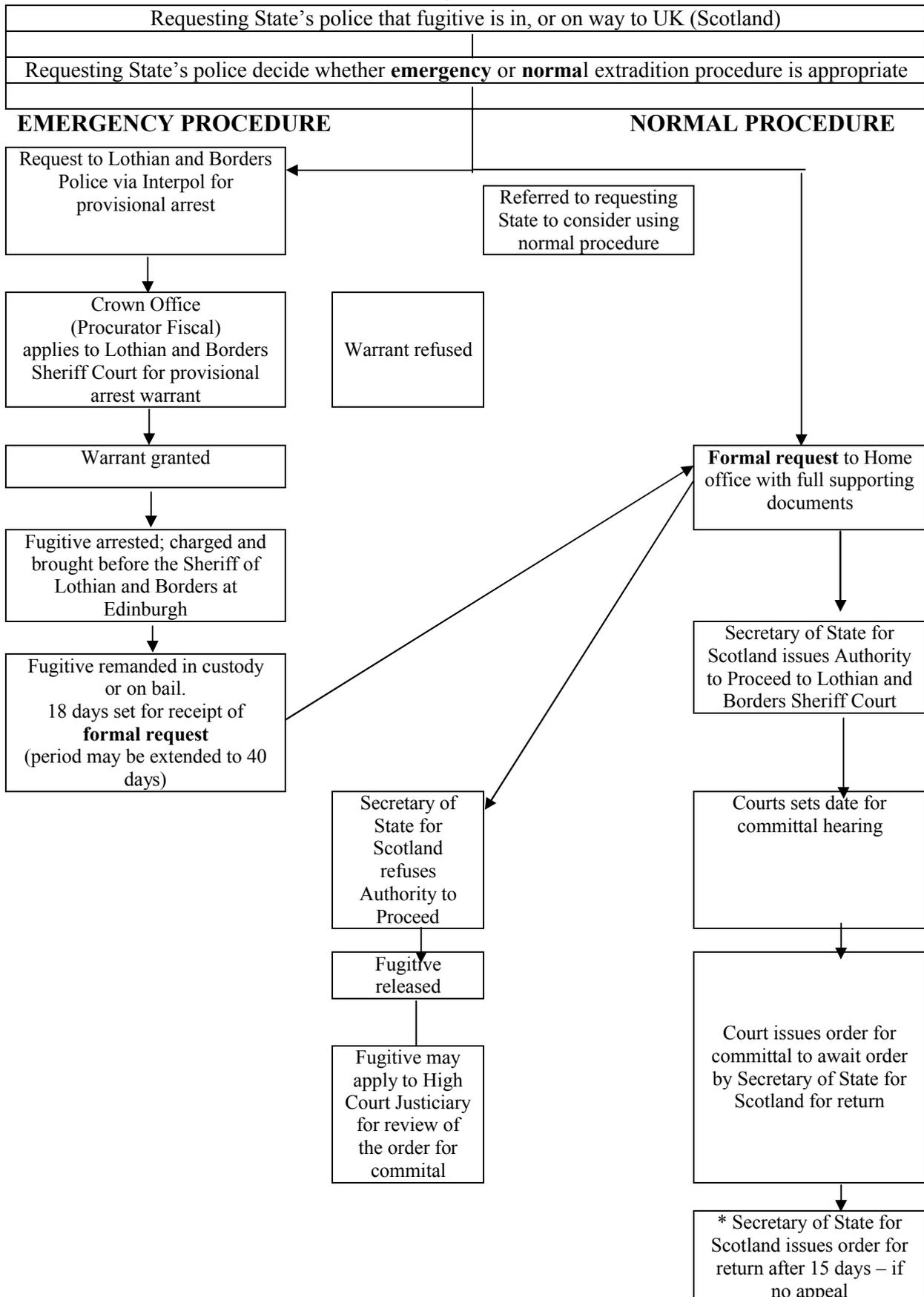
## ENGLAND AND WALES

### APPEAL RIGHTS OF FUGITIVE AFTER COURT'S ORDER FOR COMMITTAL TO AWAIT HOME SECRETARY'S SURRENDER ORDER

1. Fugitive applies for habeas corpus to Divisional Court after order for committal.  
  
Note: When habeas corpus is applied for, the Home Secretary cannot make an order for return.
2. If habeas corpus fails, fugitive may apply for leave to appeal to the House of Lords within 14 days. This can be extended by the court.
3. If leave to appeal is refused by the Divisional Court, fugitive may petition the House of Lords direct for leave to appeal.
4. If petition is refused, fugitive may make representations to the Home Secretary.
5. Matter is put to the Home Secretary for the order for return to be issued.
6. Fugitive may apply to the Divisional Court within 7 days for leave to apply for judicial review of the making of the order.
7. If judicial review is refused, fugitive may apply for leave to appeal to the House of Lords.
8. If leave is not granted, fugitive may petition the House of Lords direct.
9. If refused, fugitive may be surrendered.
10. When fugitive is extradited, the Home Office writes to the FCO setting out details to forward to the Embassy.

NB. In England and Wales the requesting country has the right of appeal to the High Court against a decision of the Magistrate not to order the committal of a fugitive. Likewise, the requested country may also appeal to the House of Lords against a decision by the Divisional Court to allow the appeal of the fugitive against his extradition. Where the Secretary of State decides not to issue an Authority to Proceed or an order for return, the requesting country has no right of appeal as such but may challenge the decision by way of a judicial review.

**REQUEST FOR EXTRADITION FROM SCOTLAND BY EC MEMBERS STATE  
TYPICAL PATH**



\*Most of case end at this point; with no appeal.

**SCOTLAND****APPEAL RIGHTS OF FUGITIVE AFTER COURT'S ORDER FOR COMMITTAL TO AWAIT SECRETARY OF STATE'S SURRENDER ORDER**

1. Fugitive applies to the High Court of Justiciary for review of the committal order.

Note: When review application is pending, the Secretary of State for Scotland cannot make an order for return.

2. If application to High Court of Justiciary is refused or no such application made, fugitive may make representations to the Secretary of State for Scotland within 15 days of notification that the Secretary of State is contemplating making an order for return.

3. Matter is put to the Secretary of State for Scotland for the order for return to be issued.

4. Fugitive may apply to the Outer House of the Court of Session within 7 days for judicial review of the making of the order for return. Appeal from the decision of the Outer House lies to the Inner House of the Court of Session and thence to the House of Lords.

Note: While Judicial Review is pending, the fugitive cannot be returned.

5. If refused, fugitive may be surrendered.

6. When fugitive is extradited, details are forwarded to the FCO to forward to the Embassy.

NB. In Scotland the requesting country has the right of appeal to the High Court of Justiciary against a decision of the Sheriff not to order the committal of a fugitive. Where the Secretary of State for Scotland decides not to issue an Authority to Proceed or an order for return, the requesting country has no right of appeal as such but may challenge the decision by way of a judicial review.