

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1991 Nr. 78

A. TITEL

*Europees Verdrag betreffende uitlevering;
Parijs, 13 december 1957*

B. TEKST

De tekst van het Verdrag is geplaatst in *Trb.* 1965, 9.

Het Verdrag is aangevuld bij Protocol van 15 oktober 1975 en bij Protocol van 17 maart 1978.

Voor de ondertekeningen zie ook *Trb.* 1969, 62, *Trb.* 1971, 130, *Trb.* 1982, 6 en *Trb.* 1986, 47.

Het Verdrag is voorts nog ondertekend voor de volgende Staat:

het Verenigd Koninkrijk van Groot-

Brittannië en Noord-Ierland 21 december 1990

C. VERTALING

Zie *Trb.* 1965, 9.

D. PARLEMENT

Zie *Trb.* 1969, 62.

De in rubriek H hieronder afgedrukte overeenkomst behoeft niet de goedkeuring der Staten-Generaal ingevolge additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet, juncto artikel 62, eerste lid, onderdeel b, van de Grondwet naar de tekst van 1972.

E. BEKRACHTIGING

Zie *Trb.* 1965, 9, *Trb.* 1969, 62¹⁾, *Trb.* 1970, 131, *Trb.* 1971, 130, *Trb.* 1977, 20²⁾, *Trb.* 1982, 6, *Trb.* 1986, 47 en *Trb.* 1987, 186.

Behalve de aldaar genoemde hebben nog de volgende Staten in overeenstemming met artikel 29, eerste lid, van het Verdrag een akte van bekrachtiging bij het Secretariaat van de Raad van Europa nedergelegd:

Portugal³⁾ 25 januari 1990
 het Verenigd Koninkrijk van Groot-
 Brittannië en Noord-Ierland⁴⁾ 13 februari 1991

¹⁾ Op 12 juli 1988 heeft de Regering van Ierland de bekrachtiging van het Verdrag op 2 mei 1966 bevestigd. Daarbij werd de volgende uitleg gegeven: "A decision of the Irish Supreme Court has made it impossible for Ireland to comply with its international obligations under the European Convention on Extradition.

The Court ruled that Ireland was not bound by its ratification of a similar extradition Treaty as the approval of Dail Eireann of the terms of that Treaty had not been obtained prior to ratification as is required by the Constitution of Ireland. The said Supreme Court Decision serves as a binding precedent in all future extradition cases.

The same circumstance applies in the case of the European Convention on Extradition. Dail approval of the terms thereof was not obtained prior to ratification of the said Convention on behalf of the Government of Ireland in 1966. Consequently, in the event of a court challenge, Ireland's ratification in 1966 is likely to be declared invalid under domestic law.

In order to rectify this position, Dail Eireann approved the terms of the European Convention on Extradition on 29 June 1988. It is now necessary, for the purposes of domestic requirements, for the Government of Ireland to confirm the earlier ratification by way of deposit of a new instrument of ratification."

²⁾ Op 2 oktober 1990 heeft de Bondsrepubliek Duitsland een nota gericht aan de Secretaris-Generaal van de Raad van Europa over onder meer de voortzetting van door de Bondsrepubliek Duitsland gesloten verdragen na de toetreding van de Duitse Democratische Republiek tot de Bondsrepubliek Duitsland per 3 oktober 1990. Het desbetreffende gedeelte uit de nota luidt als volgt:

"The Permanent Representation of the Federal Republic of Germany to the Council of Europe presents its compliments to the General Secretariat of the Council of Europe and has the honour to inform the Secretariat that, with regard to the continued application of treaties of the Federal Republic of Germany and the treatment of treaties of the German Democratic Republic following its accession to the Federal Republic of Germany with effect from 3 October 1990, the Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the establishment of German unity (Unification Treaty) contains the following relevant provisions.

1. Article 11 *Treaties of the Federal Republic of Germany*

The contracting parties proceed on the understanding that international treaties and agreements to which the Federal Republic of Germany is a contracting party, including treaties establishing membership of international organizations or institutions, shall retain their validity and that the rights and obligations arising therefrom, with the exception of the treaties named in An-

nex I, shall also relate to the territory specified in Article 3 of this Treaty, where adjustments become necessary in individual cases, the all-German Government shall consult with the respective contracting parties.

(The treaties listed in Annex I concern matters of status and security.)

....

The Federal Republic of Germany will proceed in accordance with these provisions."

3) Op 12 februari 1990 heeft Portugal nog de volgende verklaring afgelegd en de volgende voorbehouden gemaakt:

"The term 'nationals' within the meaning of the Convention shall apply to Portuguese citizens, regardless of how they acquired their nationality.

Article 1: Portugal shall not grant the extradition of persons:

a. who are to be tried by a special court or who are to serve a sentence passed by such a court;

b. who it has been proved will be subjected to a trial which affords no legal guarantees of criminal proceedings complying with the conditions internationally recognised as essential to the protection of human rights, or will serve their sentences in inhuman conditions;

c. who are being demanded in connection with an offence punishable by a life-long sentence or detention order.

Article 2: Portugal shall grant extradition only for offences punishable by deprivation of liberty for more than one year.

Article 6, paragraph 1: Portugal shall not grant extradition in respect of Portuguese nationals.

Article 11: Portugal shall not grant extradition for offences punishable by the death penalty under the law of the requesting state.

Article 21: Portugal shall authorise transit through its national territory only in respect of persons whose circumstances are such that their extradition may be granted."

Op 5 februari 1991 heeft Duitsland naar aanleiding van het door Portugal gemaakte voorbehoud met betrekking tot artikel 1 het volgende medegedeeld:

"The Government of the Federal Republic of Germany considers Portugal's reservation (under item c) to Article 1 of the Convention to be compatible with the object and purpose of the Convention only if refusal to grant extradition for offences punishable by a life-long sentence or detention order is not absolute. It takes the reservation to mean that the only circumstance in which extradition will not be granted is where there is no possibility under the law of the requesting state for the person sentenced to life imprisonment, having completed a certain proportion of the sentence or period of detention, to obtain a judicial review of his case with a view to having the remainder of the sentence commuted to probation."

4) Onder de volgende voorbehouden en verklaringen:

"Article 1

The United Kingdom reserves the right to refuse to grant extradition which is requested pursuant to or for the purpose of executing a conviction or sentence pronounced against the person concerned in his absence from proceedings in respect of which the conviction or sentence was pronounced.

Article 2

(1) The United Kingdom may decide to grant extradition in respect of any offences which under the law of the requesting State and the law of the United Kingdom are punishable by a sentence of imprisonment for a term of 12

months or any greater punishment, whether or not such a sentence has in fact been imposed.

(2) The United Kingdom reserves the right to refuse extradition if it appears, in relation to the offence or each of the offences in respect of which a person's return is sought that by reason of its trivial nature, or because the accusation is not made in good faith in the interests of justice, it would in all the circumstances be unjust or oppressive to return him.

Article 3

The United Kingdom reserves the right to apply the provisions of Article 3 paragraph 3 only in respect of States parties to the European Convention on the Suppression of Terrorism.

Article 8

The United Kingdom may refuse to extradite a person if the authorities in any part of the United Kingdom, the Channel Islands or the Isle of Man have instituted or are about to institute criminal or other proceedings against that person, whether or not those proceedings are in respect of the offence or offences for which extradition is requested.

Article 9

The United Kingdom reserves the right to refuse to grant extradition of a person accused of an offence, if it appears that that person would if charged with that offence in the United Kingdom be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

Article 10

The United Kingdom reserves the right to refuse extradition if it appears, in relation to the offence, or each of the offences, in respect of which the person's return is sought, that by reason of the passage of time since he is alleged to have committed it, or to have become unlawfully at large, as the case may be, it would, having regard to all the circumstances, be unjust or oppressive to return him.

Article 12

(1) In addition to the request and any supporting documents, the United Kingdom will require a statement indicating whether or not a conviction in respect of which extradition is requested was obtained in the presence of the person whose return is sought.

(2) The request must be supported by the original of the conviction and sentence or detention order, or of the warrant of arrest or other order having the same effect.

(3) The statement of the offences for which extradition is requested must contain a description of the conduct which it is alleged constitutes the offence or offences for which extradition is requested.

(4) For the purposes of proceedings in the United Kingdom, foreign documents shall be deemed duly authenticated

(a) if they purport to be signed by a judge, magistrate or officer of the State where they were issued; and

(b) if they purport to be certified by being sealed with the official seal of the Minister of Justice, or some other Minister of State, of that State.

Article 14, paragraph 1, sub-paragraph (a)

The United Kingdom reserves the right in any case to refuse to consent to a person who has been extradited being proceeded against, sentenced or detained with a view to carrying out the sentence or detention order for any offence committed prior to his surrender other than that for which he was

extradited or to his being for any other reason restricted in his personal freedom.

Article 21

The United Kingdom cannot accept the application of Article 21.

Article 23

The documents to be produced shall be in English or accompanied by a translation into English.

Article 27

This Convention shall apply to the United Kingdom of Great Britain and Northern Ireland, to the Channel Islands and to the Isle of Man. The United Kingdom reserves the right to notify the Secretary General of the application of the Convention to any territory for the international relations of which the United Kingdom is responsible.

Article 28

The Convention supersedes the provisions of bilateral treaties between the United Kingdom and the other Contracting Parties only to the extent that the Convention applies, by or under Article 27, to the United Kingdom, the Contracting Parties, and any territories for whose international relations the United Kingdom or Contracting Parties are responsible.

Notification

The Convention shall not apply between the United Kingdom and any Contracting Party when laws are in force in the United Kingdom and in that Contracting Party providing for the execution in the territory of each of them of warrants issued in the territory of the other.

The United Kingdom, in giving effect to this Convention, will have regard to its human rights obligations under the European Convention on Human Rights.”

F. TOETREDING

Zie *Trb.* 1969, 62, *Trb.* 1970, 131 en *Trb.* 1971, 130.

G. INWERKINGTREDING

Zie *Trb.* 1965, 9 en *Trb.* 1969, 62.

De overeenkomst vervat in de in rubriek H hieronder afgedrukte brieven zal ingevolge het aan het slot der brieven gestelde op 1 juli 1991 in werking treden.

Wat het Koninkrijk der Nederlanden betreft, zal de overeenkomst evenals het Verdrag alleen voor Nederland gelden.

H. TOEPASSELIJKVERKLARING

Bij briefwisseling tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Franse Republiek is een overeenkomst als bedoeld in artikel 27, vierde lid, van het onderhavige Verdrag tot stand gekomen.

De tekst van de brieven luidt als volgt:

Nr. I

La Haye, le 23 janvier 1991

AMBASSADE DE FRANCE
AUX PAYS-BAS

L'AMBASSADEUR

Monsieur le Ministre,

A la suite des entretiens qui se sont déroulés entre les représentants de nos deux pays, j'ai l'honneur, d'ordre de mon Gouvernement, de proposer que l'application de la Convention européenne d'extradition du 13 décembre 1957 soit étendue aux Territoires français d'Outre Mer de Polynésie française de Nouvelle Calédonie et de Wallis et Futuma ainsi qu'aux collectivités territoriales de Mayotte et de Saint Pierre et Miquelon.

Les réserves et déclarations faites par le Gouvernement français lors de sa ratification s'appliquent à cette extension territoriale.

Si cette proposition recueille l'agrément du Gouvernement des Pays-Bas, la présente lettre et votre réponse au nom du Gouvernement des Pays-Bas, dont les versions française et néerlandaise¹⁾ font également foi, constitueront un accord entre nos deux Gouvernements.

Le présent échange de lettres entrera en vigueur le premier jour du troisième mois suivant la date de réception de votre réponse.

Je vous prie de croire, Monsieur le Ministre, en l'assurance de ma très haute considération.

(s.) JEAN-RENE BERNARD

Jean-René Bernard

Son Excellence
Monsieur H. van den Broek
Ministre des Affaires Etrangères
Bezuidenhoutseweg 67
2594 AC La Haye

¹⁾ De brieven zijn alleen in het Frans.

Nr. II

MINISTRE DES AFFAIRES ETRANGERES
DU ROYAUME DES PAYS-BAS

La Haye, le 28 mars 1991

Cher Ambassadeur,

J'ai l'honneur d'accuser réception de votre lettre du 23 janvier 1991, qui s'énonce comme suit:

(Zoals in Nr. I)

En réponse à votre lettre j'ai l'honneur de vous faire savoir que les propositions françaises en la matière ont recueilli l'agrément du Gouvernement du Royaume des Pays-Bas.

Votre lettre et la présente réponse constitueront donc un accord entre nos deux Gouvernements, qui entrera en vigueur le premier jour du troisième mois suivant la date de réception de la présente.

Je vous prie d'agréer, Monsieur l'Ambassadeur, l'assurance de ma très haute considération.

(s.) H. VAN DEN BROEK

H. van den Broek
Ministre des Affaires Etrangères
du Royaume des Pays-Bas

Son Excellence
Monsieur Jean-René Bernard
Ambassadeur de France
à La Haye

J. GEGEVENS

Zie *Trb.* 1965, 9, *Trb.* 1969, 62, *Trb.* 1970, 131, *Trb.* 1971, 130, *Trb.* 1977, 20, *Trb.* 1982, 6, *Trb.* 1986, 47 en *Trb.* 1987, 186.

Voor het op 5 mei 1949 te Londen tot stand gekomen Statuut van de Raad van Europa zie ook, laatstelijk, *Trb.* 1991, 63.

Ingevolge artikel 28, eerste lid, van het onderhavige Verdrag is op 25 april 1990 het op 19 mei 1894 te Lissabon tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en het Koninkrijk Portugal tot regeling der wederzijdse uitwisseling van misdadigers (vgl. *Trb.* 1990, 52) buiten werking getreden in de verhouding Nederland-Portugal.

Ingevolge artikel 28, eerste lid, van het onderhavige Verdrag is op 14 mei 1991 het op 26 september 1898 te Londen tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en het Verenigd Koninkrijk van Groot-Brittannië en Ierland tot uitlevering van misdadigers, ook van toepassing op de wederzijdse koloniën (vgl. *Trb.* 1991, 77) buiten werking getreden in de verhouding Nederland, enerzijds, en het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland, de Kanaaleilanden en het eiland Man, anderzijds.

Uitgegeven de *eenendertigste* mei 1991.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK