

Law No 433 of 10 June 2003 amending the Law on the extradition of offenders and the Law on the extradition of offenders to Finland, Iceland, Norway and Sweden (transposition of the Council Framework Decision on the European arrest warrant, etc.)

[Promulgation]

Section 1

The following amendments shall be introduced into the Law on the extradition of offenders, as promulgated by Order No 110 of 18 February 1998 and amended by Section 4 of Law No 280 of 25 April 2001 and by Section 5 of Law No 378 of 6 June 2002:

1. Section 1(2) shall read as follows:

"(2) However, the Law shall not apply to extraditions from Denmark to Iceland and Norway. Moreover, the Law shall not apply to extraditions from Denmark to Finland and Sweden in so far as the special rules on extraditions between the Nordic states are of wider scope than the rules in this Law."

2. The title of Chapter 2 shall read as follows:

"Conditions for extradition to states outside the European Union".

3. Section 2 shall read as follows:

"2. (1) The Minister of Justice, acting under an agreement with a state outside the European Union, may decide that a Danish national can be extradited for prosecution in that state,

(1) if the person in question has in the two years preceding the criminal act resided in the state seeking his extradition and the act constituting the offence for which the extradition is sought is punishable under Danish law by a period of imprisonment of at least one year, or

(2) if the act is punishable under Danish law by a period of imprisonment of longer than four years.

(2) If, in relation to a state outside the European Union, one of the agreements specified in paragraph 1 does not apply, the Minister of Justice may adopt a decision on the extradition of a Danish national for prosecution if the conditions in paragraph 1 are otherwise met and this is indicated by special law-enforcement reasons."

4. Section 2a shall read as follows:

"2a. An alien can be extradited for prosecution or execution of a judgment in a state outside the European Union if the act is punishable under Danish law by a period of imprisonment of at least one year. If the act is punishable under Danish law by a shorter period of imprisonment, the person can nevertheless be extradited if an agreement to that effect has been concluded with the state in question."

5. The following paragraph shall be introduced into Section 6 as paragraph 2:

"(2) Moreover, the person shall not be extradited if there is a danger that, after extradition, he will suffer torture or other inhuman or degrading treatment or punishment."

6. Section 8 shall read as follows:

"8. A person shall not be extradited if he has been judged, acquitted or pardoned for the criminal act in question in Denmark. If the charges against the person have been dismissed, he can only be extradited if the conditions laid down in the Law on the administration of justice for review of the decision to dismiss the charges are met. If the charges against the person have been withdrawn and the conditions for reviewing a decision to withdraw charges have not been met, the extradition may be refused."

7. Section 9(2) shall be repealed.

8. In Section 10 indent 1(a) "see, however, Section 10a" shall be deleted.

9. Section 10a shall be repealed and replaced by the following provisions:

"Chapter 2a

Conditions for extradition to Member States of the European Union

10a. (1) The extradition of persons for prosecution or execution of a judgment in a Member State of the European Union for an offence that, under the law of the Member State that has requested the extradition, is punishable by imprisonment or a detention order for a period of at least three years can be effected on the basis of a European arrest warrant although a corresponding act is not punishable in Danish law. In the case of the following acts:

- (1) participation in a criminal organisation,
- (2) terrorism,
- (3) trafficking in human beings,
- (4) sexual exploitation of children and child pornography,
- (5) illicit trafficking in narcotic drugs and psychotropic substances,
- (6) illicit trafficking in weapons, munitions and explosives,
- (7) corruption,
- (8) fraud, including that affecting the financial interests of the European Communities,
- (9) laundering of the proceeds of crime,
- (10) counterfeiting currency, including of the euro,
- (11) computer-related crime,
- (12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- (13) facilitation of unauthorised entry and residence,
- (14) murder, grievous bodily injury,
- (15) illicit trade in human organs and tissue,
- (16) kidnapping, illegal restraint and hostage-taking,
- (17) racism and xenophobia,
- (18) organised or armed robbery,
- (19) illicit trafficking in cultural goods, including antiques and works of art,
- (20) swindling,
- (21) racketeering and extortion,
- (22) counterfeiting and piracy of products,
- (23) forgery of administrative documents and trafficking therein,

- (24) forgery of means of payment,
- (25) illicit trafficking in hormonal substances and other growth promoters,
- (26) illicit trafficking in nuclear or radioactive materials,
- (27) trafficking in stolen vehicles,
- (28) rape,
- (29) arson,
- (30) crimes within the jurisdiction of the International Criminal Court,
- (31) unlawful seizure of aircraft/ships,
- (32) sabotage.

(2) Persons can be extradited for prosecution in a Member State of the European Union for acts that are not covered by paragraph 1 under a European arrest warrant if the criminal act in the Member State renders the person liable to a period of imprisonment of at least one year and a corresponding act is punishable under Danish law.

(3) Persons can be extradited for execution of a judgment in a Member State in the European Union for acts that are not covered by Section 1 under a European arrest warrant if the judgment has sentenced the person to prison or a detention order of not less than four months and the corresponding act is punishable under Danish law.

(4) A person can be extradited for prosecution or execution of a judgment for a number of offences although the conditions in paragraphs 1-3 are met in the case of only one of those offences.

10b. (1) When a Danish national or a person permanently resident in Denmark is extradited for prosecution it may be made a condition of extradition that the person will be transferred to Denmark to serve any prison sentence or other period of detention.

(2) A request for the extradition of a Danish national or a person who is permanently resident in Denmark for execution of a judgment can be refused if the punishment can instead be served in Denmark.

10c. A person shall not be extradited if, at the time of the offence, he was below the age of criminal responsibility (see Section 15 of the Criminal Code).

10d. (1) A person shall not be extradited if, in Denmark or another Member State of the European Union other than the Member State requesting extradition, he has been tried or acquitted of the same criminal act. The foregoing provisions shall also apply if a person whose extradition is sought has been granted a pardon in Denmark for the act. Moreover, the request for extradition can be refused if the person whose extradition is sought has been tried or acquitted of the act in a state outside the European Union. Although the person has been tried for the same criminal act in a state other than the state that has requested the extradition, extradition can be refused under the first and third sentences if the judgment has been executed, is in the course of being executed, or can no longer be executed under the law of that state.

(2) If the charges against the person concerned have been dismissed in Denmark he can be extradited only if the conditions in the Law on the administration of justice concerning the review of the decision to dismiss the charges are met. Moreover, extradition can be refused if the charges have been withdrawn and the conditions for reviewing the decision to withdraw the charges are not met.

(3) Extradition for prosecution can be refused if court proceedings have been instituted in Denmark against the person concerned for the act for which extradition is sought and the legal proceedings, by reason of the nature of the act, the person's relation to Denmark and the circumstances in general, indicate that the proceedings should be carried out in Denmark.

10e. Extradition for a criminal act within the jurisdiction of the Danish criminal authorities, can be refused if liability to the penalty or access to execute the penalty for the person's act would have been statute-barred under Danish law.

10f. (1) A person shall not be extradited if the act in question was performed, wholly or in part, in Denmark and is not punishable under Danish law.

(2) Extradition can be refused if the act in question was performed outside the territory of the requesting Member State and a corresponding act, if performed outside Danish territory, would not come within Danish criminal jurisdiction.

10g. (1) A person can be extradited in relation to the execution of a judgment *in absentia* sentencing the person the prison or a detention order only if the trial summons has been served on him personally or he has otherwise been informed of the time and place of the trial.

(2) Nevertheless, notwithstanding the conditions in paragraph 1, a person who has been sentenced *in absentia* in the Member State can be extradited if he can request that the case be re-opened and he can be present at the new trial.

10h. (1) A person shall not be extradited if there is a danger that, after extradition, he will suffer persecution concerning his life or freedom or otherwise of a serious nature by reason of his origins, membership of a specific ethnic group, religious or political beliefs or, in general, for political reasons.

(2) Moreover, a person shall not be extradited if there is a danger that, after extradition he will suffer torture or other inhuman or degrading treatment or punishment.

10i. If, in special circumstances, in particular having regard to the person's age, health or other personal conditions, it must be accepted that extradition would be incompatible with humanitarian concerns, extradition shall be postponed until the special conditions preventing extradition no longer apply.

10j. (1) The provisions of Section 10 shall apply *mutatis mutandis*.

(2) However, an extradited person can be held responsible, without the authorisation of the Minister of Justice, for criminal acts committed before extradition other than the act for which he has been extradited if the prosecution or execution of the sentence does not entail deprivation of freedom. Moreover, the extradited person can be held responsible without the authorisation of the Minister of Justice if he has duly given his consent in court proceedings in the Member State where the extradition took place.

(3) An extradited person can be subsequently extradited to a third Member State without the authorisation of the Minister of Justice if, in connection with consenting to extradition to the Member State in which the extradition took place, he has given his consent to being held responsible and subsequently extradited to a third Member State for other criminal acts committed before extradition than that for which he has been extradited (see the second sentence of Section 18c). A person can also be further extradited without the authorisation of the Minister of Justice if he has duly given his consent in court proceedings in the Member State where the extradition took place."

10. The title of Chapter 3 shall be worded as follows:

"The procedure in cases of extradition to states outside the European Union".

11. In Section 11(1) "however, see Chapter 3a," shall be deleted.

12. Chapter 3a shall read as follows:

"Chapter 3a

Procedure in cases of extradition to Member States of the European Union

18a. (1) A European arrest warrant shall, if it is to form the basis for the arrest and extradition of a person to a Member State of the European Union, contain particulars of the requested person's identity and nationality, the time and place of commission of the offence, the nature of the offence and the relevant provisions of the criminal law and information on whether a decision has been adopted on arrest or imprisonment or whether judgment has been pronounced.

(2) A European arrest warrant that has been issued with a view to extradition for prosecution shall also indicate the penalty the offence carries under the law of the requesting Member State.

(3) A European arrest warrant issued with a view to extradition for executing a sentence shall also contain information on the penalty or other sanction imposed.

18b. (1) Unless the Minister of Justice finds, on the basis of the information contained in the European arrest warrant itself, that extradition should be refused, the warrant shall be sent to the police in the area where the requested person resides. The police shall forthwith carry out the investigation necessary to determine whether the conditions for extradition have been met. In the investigation the provisions of Book 4 of the Law on the administration of justice shall apply *mutatis mutandis*.

(2) In order to assist the investigation and expedite the extradition, the procedures mentioned in the Law on the administration of justice in Chapter 69 on arrest and in Chapter 70 on preventive detention shall apply in so far as the European arrest warrant has been issued for an offence that can lead to extradition under the rules in Chapter 2a. In addition, the procedures mentioned in the Law on the administration of justice in Chapter 72 on physical integrity, Chapter 73 on searches, Chapter 74 on seizure and discovery and Chapter 75a on other investigations shall apply to the same extent as in cases concerning corresponding offences that are prosecuted in Denmark.

(3) The provisions on the appointment of defence counsel in Section 14 shall apply *mutatis mutandis*.

(4) After the conclusion of the police investigation under paragraph 1, the issue of extradition shall be referred to the Minister of Justice for decision. The provisions in Sections 15(2) and 16 shall apply *mutatis mutandis*.

18c. A requested person can at a court hearing signify his consent to extradition. In addition, he can give his consent at a court hearing to being held responsible and further extradited to a third Member State for criminal acts committed before extradition other than that for which he is being extradited. The court shall provide guidance for him on the consequences of giving consent under these provisions.

18d. (1) The decision of the Minister of Justice under Section 18b(4) shall be taken as soon as possible and in any event within 10 days of the date when the requested person was detained in Denmark or gave his consent to extradition.

(2) If the Minister decides to proceed with the extradition and refers the case to the court under Article 16 (see also the second sentence of Article 18b(4)), the court shall where possible deliver final judgment within 60 days of the date when the person was detained in Denmark.

18e. (1) Unless the person renounces the right to refer the decision on extradition to the court, he shall not be extradited before the expiry of the three-days' time-limit specified in Section 16 (see also the second sentence of Section 18b(4)). If the decision is referred to the court, he shall not be extradited before the decision has been found to be lawful by a final ruling of the court.

(2) The person shall be extradited as soon as possible after 10 days following the expiry of the time-limits specified in paragraph 1 (see, however, Section 10i).

(3) In order to ensure that a person is extradited the procedures specified in the Law on the administration of justice in Chapter 69 on arrest and Chapter 70 on preventive detention shall be applicable. Imprisonment and detention that have taken place in accordance with these provisions shall be terminated if the person has not been extradited within the time-limit specified in paragraph 2. Nevertheless, in special cases the court may extend the time-limit.

18f. Chattels that have been seized during the case shall, if so requested and subject to any third parties' rights, be transferred to the requesting authority if they constitute evidence or they originate in the offence."

13. In Section 19 (1) "foreign state" shall be replaced by "state outside the European Union"

14. Section 20(4) shall read as follows:

"(4) The application for authorisation under paragraph 1 from a state outside the European Union shall contain the information specified in Section 11(1) and indicate whether the requested person seeks to have the lawfulness of any authorisation verified by the courts. An application for authorisation under paragraph 1 by a Member State of the European Union shall contain the information specified in Section 18a(1) - (3) and indicate whether the requested person seeks to have the lawfulness of any authorisation verified by the courts."

15. In Section 21(1) "and Section 2a" shall be introduced after "Section 2".

16. In Section 21 the following new paragraph shall be introduced after paragraph 1:

"(2) However, if the person is extradited to another Member State of the European Union an authorisation may be issued provided that information has been received concerning the requested person's identity and nationality, the time and place of the criminal act, the nature of the act and the relevant provisions of criminal law and information on whether a European arrest warrant has been issued. If the person is extradited to another Member State from a state outside the European Union in addition to the information specified in the first sentence it shall also be specified whether a further extradition has been sought."

The present paragraph 2 shall be renumbered paragraph 3.

17. After Section 21 the following provisions shall be introduced:

"21a. (1) A person who is the subject of a detention order in a foreign country and has nevertheless been extradited to Denmark with a view to prosecution there shall, on the conclusion of the prosecution, be transferred to the foreign state from which he was extradited. The person shall be detained in custody during extradition unless the contrary has been agreed with the extraditing state.

(2) The decision on detention in custody shall be taken by the courts on application by the police. Custody shall be subject to a time-limit, which may be extended. The court's ruling shall be adopted in the form of an order.

(3) During custody the requested person shall be subject only to those restrictions necessary to ensure the purpose of the custody and compliance with the order and safety at the place where he is detained. The person can be detained in a local prison (see Section 770(2) of the Law on the administration of justice)."

Section 2

The following amendments shall be introduced into Law No 27 of 3 February 1960 on the extradition of offenders to Finland, Iceland, Norway and Sweden, as amended by Law No 251 of 12 June 1975, Section 5 of Law No 433 of 31 May 2000 and Section 6 of Law No 378 of 6 June 2000:

1. In Section 1 the following provisions shall be inserted as paragraph 2

"(2) Nevertheless, the Law shall not apply to extraditions from Denmark, Finland and Sweden where the special rules on extradition between Member States of the European Union are of wider scope than the rules in this Law."

Section 3

This Law shall enter into force on 1 January 2004. It shall apply to requests for extradition made after its entry into force.

Section 4

This Law shall not apply to the Faeroes and Greenland but it may be introduced, wholly or in part, for them, subject to the exemptions required by the special conditions obtaining there.

Done at Christiansborg Palace on 10 June 2003.