Betænkning

over

Forslag til lov om ændring af borgerlig straffelov

(Bekæmpelse af terrorisme)

Betænkning afgivet af retsudvalget den 11. april 1978

Udvalget har behandlet lovforslaget i en række møder og har herunder haft samråd med justitsministeren, der tillige skriftligt har besvaret en række spørgsmål fra udvalget. Nogle af ministerens besvarelser vil blive optrykt i et bilagshæfte til betænkningen.

Justitsministeren har stillet nedenstående ændringsforslag, hvorom henvises til de ledsagende bemærkninger.

Udvalget har endvidere modtaget en række protestskrivelser mod lovforslagets gennemførelse.

Herefter indstiller et *flertal* (udvalget med undtagelse af socialistisk folkepartis og Danmarks kommunistiske partis medlemmer af udvalget) lovforslaget til *vedtagelse* med det af justitsministeren stillede ændringsforslag.

Et *mindretal inden for flertallet* (venstres, det konservative folkepartis, centrumdemokraternes og kristeligt folkepartis medlemmer af udvalget) ønsker at give udtryk for, at regeringen ikke bør tage forbehold over for konventionens artikel 1 i henhold til artikel 13. Mindretallet finder, at et forbehold om i givet fald at nægte udlevering som følge af forbrydelsens politiske karakter vil kunne fortolkes som en afsvækkelse af Danmarks vilje til at deltage effektivt i bekæmpelsen af terrorismen.

Et *andet mindretal inden for flertallet* (det radikale venstres medlem af udvalget) udtaler, at lovforslaget er den nødvendige forudsætning for forbeholdet over for artikel 1 i den europæiske konvention om bekæmpelse af terrorisme. Regeringen ønsker at tage forbehold over for artikel 1, og mindretallet anbefaler at tage forbeholdet.

Mindretallet ønsker ved sin holdning at være med til at styrke regeringen i denne stillingtagen vedrørende artikel 1, så det kan fastslås mere utvetydigt, end det ellers ville være tilfældet, at dette forbehold skal tages.

Mindretallet må imidlertid så kraftigt, som det er muligt, henstille, at regeringen også tager forbehold over for artikel 8.

Forbeholdet over for artikel 1 sikrer mod udlevering af udlændinge, der af politiske grunde overtræder deres eget lands love, og som uden forbehold over for artikel 1 skulle udleveres.

Forbeholdet over for artikel 8 sikrer danske statsborgeres rettigheder.

Den norske regering har som den italienske anset det for nødvendigt at understrege, at man ikke er forpligtet til at yde andre stater »størst mulig gensidig bistand i straffesager vedrørende de i artiklerne 1 og 2 nævnte forbrydelser«, når disse forbrydelser står i forbindelse med politiske forbrydelser eller er inspireret af politiske motiver.

Mindretallet er enig med den norske og den italienske regering.

Uanset bestemmelserne i stykke 2 i artikel 8 har den norske og den italienske regering anset et udtrykkeligt forbehold for nødvendigt. Det gør mindretallet også.

Et *mindretal* (socialistisk folkepartis og Danmarks kommunistiske partis medlemmer af udvalget) indstiller lovforslaget til *forkastelse* ved 3. behandling. Mindretallet anerkender, at regeringen, inden Danmark ratificerer den europæiske konvention om bekæmpelse af terrorisme, ønsker at tage forbehold over for konventionens artikel 1. Mindretallet finder imidlertid ikke dette for-

behold tilstrækkeligt og vil ikke være medvirkende til, at konventionen ratificeres uden yderligere forbehold. En tilslutning til lovforslaget ville ses som en tilslutning til ratificering af konventionen.

Mindretallet anser især konventionens artikel 8 for at være et brud på danske retsregler, da den indebærer en forpligtelse for Danmark til ubetinget at yde et andet land retshjælp, selv om Danmark anser en given handling omfattet af konventionen for at være en politisk forbrydelse. Dette indebærer bl. a., at det danske politi kan forpligtes af en fremmed magt til at foretage ransagninger på danske bladredaktioner og politiske organisationers kontorer.

Mindretallet ønsker at fremhæve, at det anser det for den danske stats opgave at forsvare borgerne mod terroristisk aktivitet. Men dette forsvar må tilrettelægges sådan, at grundlæggende retsprincipper og menneskerettigheder, som i dag er gældende for danske statsborgere, ikke krænkes. Mindretallet kan derfor ikke medvirke til nogen lovgivning, der overfører afgørende beføjelser med hensyn til strafferetlige sagers behandling til en anden stat, på hvis lovgivning Danmark i øvrigt ingen indflydelse har.

Ændringsforslag

Af *justitsministeren,* tiltrådt af et *flertal* (udvalget med undtagelse af Ebba Strange (SF) og Tove Jørgensen (DKP)):

Til § 2

»1. april 1978« ændres til: »1. juni 1978«.

Bemærkninger

Af tidsmæssige grunde foreslås det, at lovens ikrafttrædelse udskydes til den 1. juni 1978.

Hans Jørgen Jensen (S) *Ole Espersen (S)* (fmd.) *Hjortnæs (S)* *Tove Lindbo Larsen (S)* *Mette Groes (S)* *Jimmy Stahr (S)* *Bernhard Baunsgaard (RV)* *Nathalie Lind (V)* *Mette Madsen (V)* *Hagen Hagensen (KF)* (nfmd.) *Mimi Jakobsen (CD)* *Inge Krogh (KrF)* *Jørgen Junior (FP)* *Kjærulff-Schmidt (FP)* *Pilgaard Andersen (FP)* *Ebba Strange (SF)* *Tove Jørgensen (DKP)*

Partierne DR, VS og EP var ikke repræsenteret ved medlemmer i udvalget.

Skriftlige spørgsmål til justitsministeren samt dennes svar herpå

Spørgsmål 3:

»Bygger besvarelserne af spørgsmål, som angår fortolkninger af konventionen, på forarbejder til selve konventionen eller andet materiale, som med sikkerhed ville blive tillagt betydning i tilfælde af en voldgiftssag efter art. 10, eller bygger besvarelserne alene på det danske justitsministeriums bedste overbevisning? (Svaret bedes anført ved hver besvarelse, som vedrører fortolkning af konventionen).«

Svar:

Som nævnt i besvarelsen af spørgsmål 20 har det udvalg under Europarådet, der har udarbejdet udkastet til konventionen, afgivet en »explanatory report«, der indeholder en række bidrag til fortolkningen af konventionen. I det omfang besvarelsen af udvalgets spørgsmål bygger på denne redegørelse, anføres det i de pågældende svar. Redegørelsen vedlægges.

EXPLANATORY REPORT

Introduction

1. During its 25th Session in May 1973, the Consultative Assembly of the Council of Europe adopted Recommendation 703 (1973) on international terrorism "condemning international terrorist acts which, regardless of their cause, should be punished as serious criminal offences involving the killing or endangering of the lives of innocent people" and accordingly calling on the Committee of Ministers of the Council to invite the governments of member States *inter alia* "to establish a common definition for the notion of 'political offence' in order to be able to refute any 'political' justification whenever an act of terrorism endangers the life of innocent persons".

2. Having examined this recommendation, the Committee of Ministers of the Council of Europe adopted at its 53rd meeting on 24 January 1974, Resolution (74) 3 on international terrorism[1]) which recommends the governments of member States to take into account certain principles when dealing with requests for extradition of persons accused or convicted of terrorist acts.

The idea underlying this resolution is that certain crimes are so odious in their methods or results in relation to their motives, that it is no longer justifiable to classify them as "political offences" for which estradition is not possible. States receiving extradition requests related to terrorist acts are therefore recommended to take into account the particular gravity of these acts. If extradition is not granted, States should submit the case to their competent authorities for the purpose of prosecution. As many States have only limited jurisdiction over crimes committed abroad it is furthermore recommended that they envisage the possibility of establishing it in these cases to ensure that terrorists do not escape both extradition and prosecution.

3. At a meeting in Obernai (France) on 22 May 1975, the Ministers of Justice of the member States of the Council of Europe stressed the need for co-ordinated and forceful action in this field. They drew attention to the fact that acts of terrorism were today indigemous, i. e. committed for specific "political" objectives within the member States of the Council of Europe, which may threaten the very existence of the State by paralysing its democratic institutions and

[1]) See text of Resolution (74) 3, in the Appendix.

striking at the rule of law. Accordingly, they called for specifically European action.

4. Following this initiative, the 24th Plenary Session of the European Committee on Crime Problems (ECCP) held in May 1975, decided to propose to the Committee of Ministers of the Council of Europe the setting up of a committee of governmental experts to study the problems raised by certain new forms of concerted acts of violence.

5. At the 246th meeting of their Deputies in June 1975, the Committee of Ministers authorised the convocation of a committee of governmental experts.

6. Mrs. S. Oschinsky (Belgium) was elected Chairman of the committee. The Secretariat was provided by the Directorate of Legal Affairs of the Council of Europe.

7. During its first two meetings, held from 6 to 8 October 1975 and from 2 to 6 February 1976, the committee prepared a European Convention on the Suppression of Terrorism.

8. The draft convention was submitted to the 25th Plenary Session of the ECCP in May 1976 which decided to forward the result of the committee's work to the Committee of Ministers for approval.

9. At their 10th Conference, held on 3 and 4 June 1976 in Brussels, the European Ministers of Justice took note of the draft convention and expressed the hope that its examination by the Committee of Ministers be completed as quickly as possible.

10. At the 262nd meeting of their Deputies in November 1976, the Committee of Ministers approved the text which is the subject of this report and decided to open the convention to the signature of member States.

General considerations

11. The purpose of the Convention is to assist in the suppression of terrorism by complementing and, where necessary, modifying existing extradition and mutual assistance arrangements concluded between member States of the Council of Europe, including the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, in that it seeks to overcome the difficulties which may arise in the case of extradition or mutual assistance concerning persons accused or convicted of acts of terrorism.

12. It was felt that the climate of mutual confidence among the likeminded member States of the Council of Europe, their democratic nature and their respect for human rights safeguarded by the institutions set op under the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, justify opening the possibility and, in certain cases, imposing an obligation to disregard, for the purposes of extradition, the political nature of the particularly odious crimes mentioned in articles 1 and 2 of the Convention. The human rights to which regard has to be had are not only the rights of those accused or convicted of acts of terrorism but also of the victims or potential victims of those acts (cf. Article 17 of the European Convention on Human Rights).

13. One of the characteristics of these crimes is their increasing internationalisation; their perpetrators are frequently found in a State other than that in which the act was committed. For that reason extradition is a particularly effective measure for combating terrorism.

14. If the acts is an offence which falls within the scope of application of existing extradition treaties the requested State will have no difficulty, subject to the provisions of its extradition law, in complying with a request for extradition from the State which has jurisdiction to prosecute. However, terrorist acts might be considered "political offences", and it is a principle – laid down in most existing extradition treaties as well as in the European Convention on Extradition (cf. Article 3 paragraph 1) – that extradition shall not be granted in respect of a political offence.

Moreover, there is no generally accepted definition of the term "political offence". It is for the requested State to interpret it.

15. It follows that there is a serious lacuna in existing international agreements with regard to the possibility of extraditing persons accused or convicted of acts of terrorism.

16. The European Convention on the Suppression of Terrorism aims at filling this lacuna by eliminating or restricting the possibility for the requested State of invoking the political nature of an offence in order to oppose an extradition request. This aim is achieved by providing that, for extradition purposes, certain specified offences *shall ne-*

ver be regarded as "political" (Article 1) and other specified offences *may not* be (Article 2), notwithstanding their political content or motivation.

17. The system established by Articles 1 and 2 of the Convention reflects the consensus which reconciles the arguments put forward in favour of an obligation, on the one hand, and an option, on the other hand, not to consider, for the purposes of the application of the Convention, certain offences as political.

18. In favour of an obligation, it was pointed out that it alone would give States new and really effective possibilities for extradition, by eliminating explicitly the plea of "political offence", a solution that was perfectly feasible in the climate of mutual confidence that reigned amongst the member States of the Council of Europe having similar democratic institutions. It would ensure that terrorists were extradited for trial to the State which had jurisdiction to prosecute. A mere option could never provide a guarantee that extradition would take place and, moreover, the criteria concerning the seriousness of the offence would not be precise.

19. In favour of an option, reference was made to the difficulty in accepting a rigid solution which would amount to obligatory extradition for political offences. Each case should be examined on its merits.

20. The solution adopted consists of an obligation for some offences (Article 1), and an option for others (Article 2).

21. The Convention applies only to particularly odious and serious acts often affecting persons foreign to the motives behind them. The seriousness of these acts and their consequences are such that their criminal element outweighs their possible political aspects.

22. This method, which was already applied to genocide, war crimes and other comparable crimes in the Additional Protocol to the European Convention on Extradition of 15 October 1975 as well as to the taking or attempted taking of the life of a head of State or a member of his family in Article 3.3 of the European Convention on Extradition, accordingly overcomes for acts of terrorism not only the obstacles to extradition due to the plea of the political nature of the offence but also the difficulties inherent in the absence of a uniform interpretation of the term "political offence".

23. Although the Convention is clearly aimed at not taking into consideration the political character of the offence for the purposes of extradition, it does recognise that a Contracting State might be impeded, e. g. for legal or constitutional reasons, from fully accepting the obligations arising from Article 1. For this reason Article 13 expressly allows Contracting States to make certain reservations.

24. It should be noted that there is no obligation to extradite if the requested State has substantial grounds for believing that the request for extradition has been inspired by the considerations mentioned in Article 5, or that the position of the person whose extradition is requested may be prejudiced by these considerations.

25. In the case of an offence mentioned in Article 1, a State refusing extradition would have to submit the case to its competent authorities for the purposes of prosecution, after having taken the measures necessary to establish its jurisdiction in these circumstances (Articles 6 and 7).

26. These provisions reflect the maxim *aut dedere aut iudicare*. It is to be noted, however, that the Convention does not grant Contracting States a general choise either to extradite or to prosecute. The obligation to submit the case to the competent authorities for the purpose of prosecution is subsidiary in that it is conditional on the preceding refusal of extradition in a given case, which is possible only under the conditions laid down by the Convention or by other relevant treaty or legal provisions.

27. In fact, the Convention is not an extradition treaty as such. Whilst the character of an offence may be modified by virtue of Articles 1 and 2, the legal basis for extradition remains the extradition treaty or other law concerned. It follows that a State which has been asked to estradite a terrorist may, notwithstanding the provisions of the convention, still not do so if the other conditions for extradition are not fulfilled; for example, the offender may be a national of the requested State, or there may be time limitation.

28. On the other hand, the Convention is not exhaustive in the sense that it does not prevent States, if their law so allows, extraditing in cases other than those provided for

by the Convention, or to take other measures such as expelling the offender or sending him back, if in a specific case the State concerned is not in possession of an extradition request made in accordance with the Convention, or if it considers that a measure other than extradition is warranted under another international agreement or particular arrangement.

29. The obligation which Contracting States undertake by adhering to the convention are closely linked with the special climate of mutual confidence among the Members of the Council of Europe which is based on their collective recognition of the rule of law and the protection of human rights manifested by Article 3 og the Council's Statute and by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 which all member States have signed.

For that reason it was thought necessary to restrict the circle of contracting Parties to the member States of the Council, in spite of the fact that terrorism is a global problem.

30. It goes without saying that the Convention does not affect the traditional rights of political refugees and of persons enjoying political asylum in accordance with other international undertakings to which the member States are party.

Commentaries on the articles of the Convention

Article 1

31. Article 1 lists the offences each of which, for the purposes of extradition, shall not be regarded as a political offence, or as an offence connected with a political offence, or as an offence inspired by political motives.

It thus modifies the consequences of existing extradition agreements and arrangements as concerns the evaluation of the nature of the offences. It eliminates the possibility for the requested State of invoking the political nature of the offence in order to oppose an extradition request. It does not, however, create for itself an obligation to extradite, as the Convention is not an extradition treaty as such. The legal basis for extradition remains the extradition treaty, arrangement or law concerned.

32. The phrases "political offence" and "offence connected with a political offence" were taken from Article 3.1 of the European Convention on Extradition which is modified to the effect that Contracting Parties to the European Convention on the Suppression of Terrorism may no longer consider as "political" any of the offences enumerated in Article 1.

33. The phrase "offence inspired by political motives" is meant to complement the list of cases in which the political nature of an offence cannot be invoked; reference to the political motives of an act of terrorism is made in Resolution (74) 3 on international terrorism, adopted by the Committee of Ministers of the Council of Europe on 24 January 1974.[1])

34. Article 1 reflects a tendency not to allow the requested State to invoke the political nature of the offence in order to oppose requests for extradition in respect of certain particularly odious crimes. This tendency has already been implemented in international treaties, for instance in Article 3.3 of the European Convention on Extradition for the taking or attempted taking of the life of a Head of State or of a member of his family, in Article 1 of the Additional Protocol to the European Convention on Extradition for certain crimes against humanity and for violations of the laws and customs of war, as well as in Article VII of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

35. Article 1 lists two categories of crimes: the first, contained in paragraphs *a*, *b* and *c*, comprises offences which are already included in international treaties, the second, contained in paragraphs *d* and *e*, concerns offences which were considered as serious so that it was deemed necessary to assimilate them to the offences of the first category. Paragraph *f* concerns attempt to commit any of the offences listed in Article 1 and the participation therein.

36. While in paragraphs *a* and *b* the offences in question are described by simple reference to the titles of the Hague Convention of 16 December 1970 and the Montreal Convention of 23 September 1971, paragraph *c* enumerates some of the offences which are contained in the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons,

including Diplomatic Agents, of 14 December 1973 instead of referring to the Convention by name. This was done because the New York Convention had not entered into force when the European Convention was drafted, and several Council of Europe member States have not ratified it. Another reason for enumerating the acts to which paragraph *c* is to apply rather than merely referring to the title of the New York Convention is the wider scope of application of that Convention: it covers attacks on premises, accomodation and means of transport of internationally protected persons which Article 1.*c* does not. The phrase "serious offence" is meant to limit the application of the provision to particularly odious forms of violence. This idea is furthermore emphasised by the use of the term "attack" taken from the New York Convention.

37. Paragraph *d* uses the phrase "an offence involving . . ." to cover the case of a State whose laws do not include the specific offences of kidnapping or taking of a hostage. In the English text the phrase "unlawful detention" has been qualified by adding the word "serious" so as to ensure conformity with the French expression *séquestration arbitraire* which always implies a serious offence.

38. Paragraph *e* covers offences involving the use of bombs and other instruments capable of killing indiscriminately. It applies only if the use endangered persons, i. e. created a risk for persons, even without actually injuring them.

39. The attempt to commit any of the offences listed in paragraphs *a* to *e*, as well as the participation as an accomplice in their commission or attempt, are covered by virtue of paragraph *f*. Provisions of a similar nature are to be found in the Hague Convention on Seizure of Aircraft, the Montreal Convention on Safety of Civil Aircraft and the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons.

"Attempt" means only a punishable attempt; under some laws not all attempts to commit an offence constitute punishable offences.

The English expression "accomplice" covers both *co-auteur* and *complice* in the French text.

Article 2

40. Paragraph 1 of Article 2 opens the possibility for Contracting Parties not to consider "political" certain serious offences which, without falling within the scope of the obligatory rule in Article 1, involve an act of violence against the life, physical integrity or liberty of a person. This possibility derogates from the traditional principle according to which the refusal to extradite is obligatory in political matters.

The term "act of violence" used to describe the offences which may be regarded as "non-political" was drafted along the lines of Article 4 of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft.

41. By virtue of paragraph 2, inspired by Resolution (74) 3 of the Committee of Ministers,[1]) an act against property is covered only if it created a "collective" danger for persons, e. g. as the result of an explosion of a nuclear installation or of a dam.

42. The flexible wording of Article 2 allows three possibilities for acting on a request for extradition:

– the requested State may not regard the offence as "political" within the meaning of Article 2 and extradite the person concerned;

– it may not regard the offence as "political" within the meaning of Article 2, but nevertheless refuse extradition for a reason other than political;

– it may regard the offence as "political", but refuse extradition.

43. It is obvious that a State may always decide on the extradition request independently of Article 2, i. e. without expressing an opinion on whether the conditions of this Article are fulfilled.

Article 3

44. Article 3 concerns the Convention's effects on existing extradition treaties and arrangements.

45. The word "arrangements" is intended to include extradition procedures which are not enshrined in a formal treaty, such as tho-

[1]) See Appendix.

se in force between Ireland and the United Kingdom. For that reason, the term *accords* in the French text is not to be understood as meaning a formal international instrument.

46. One of the consequences of Article 3 is the modification of Article 3.1 of the European Convention on Extradition; between States which are Parties to both the European Convention on the Suppression of Terrorism and the European Convention on Extradition, Article 3.1 of the latter convention is modified insofar as it is incompatible with the obligations arising from the former. The same applies to similar provisions contained in bilateral treaties and arrangements which are applicable between States Parties to this Convention.

Article 4

47. Article 4 provides for the automatic inclusion, as an extraditable offence, of any of the offences referred to in Articles 1 and 2 in any existing extradition treaty concluded between Contracting States which does not contain such an offence as an extraditable offence.

Article 5

48. Article 5 is intended to emphasise the aim of the convention which is to assist in the suppression of acts of terrorism where they constitute an attack on the fundamental rights to life and liberty of persons. The Convention is to be interpreted as a means of strengthening the protection of human rights. In conformity with this basic idea, Article 5 ensures that the Convention complies with requirements of the protection of human rights and fundamental freedoms as they are enshrined in the European Convention of 4 November 1950.

49. One of the purposes of Article 5 is to safeguard traditional right of asylum. Although in the member States of the Council of Europe of which all but one have ratified the European Convention on Human Rights, the prosecution, punishment or discrimination of a person on account of his race, religion, nationality or political opinion is unlikely to occur, it was deemed appropriate to insert this traditional clause also in this Convention; it is already contained in Article 3.2 of the European Convention on Extradition.

50. If, in a given case, the requested State has substantial grounds for believing that the real purpose of an extradition request, made for one of the offences mentioned in Article 1 or 2, is to enable the requesting State to prosecute or punish the person concerned for the political opinions he holds, the requested State may refuse extradition.

The same applies where the requested State has substantial grounds for believing that the person's position may be prejudiced for political or any of the other reasons mentioned in article 5. This would be the case, for instance, if the person to be extradited would, in the requesting State, be deprived of the rights of defence as they are guaranteed by the European Convention on Human Rights.

51. It is obvious that a State applying this Article should provide the requesting State with reasons for its having refused to comply with the extradition request. It is by virtue of the same principle that Article 18.2 of the European Convention on Extradition provides that "reasons shall be given for any complete or partial rejection" and that Article 19 of the European Convention on Mutual Assistance in Criminal Matters states that "reasons shall be given for any refusal of mutual assistance".

52. If extradition is refused, Article 7 applies: the requested State must submit the case to its competent authorities for the purpose of prosecution.

Article 6

53. Paragraph 1 of Article 6 concerns the obligation on Constracting States to establish jurisdiction in respect of the offences mentioned in Article 1.

54. This jurisdiction is exercised only where:

– the suspected offender is present in the territory of the requested State, and

– that State does not extradite him after receiving a request for extradition from a Contracting State "whose jurisdiction is based on a rule of jurisdiction existing equally in the law of the requested State".

[1]) See Appendix.

55. In order to comply with the second requirement there must be a correspondence between the rules of jurisdiction applied by the requesting State and by the requested State.

The principal effect of this limitation appears in relation to the differences in the principles of jurisdiction between those States whose domestic courts have, under their criminal law, jurisdiction over offences committed by nationals wherever committed and those where the competence of the domestic courts is based generally on the principle of territoriality (i.e. where the offence is committed within its own territory, including offences committed on ships, aircraft and offshore installations, treated as part of the territory). Thus, in the case where there has been a refusal of a request for extradition received from a State wishing to exercise its jurisdiction to try a national for an offence committed outside its territory, the obligation under Article 6 arises only if the law of the requested State also provides as a domestic rule of jurisdiction for the trial by its courts of its own nationals for offences committed outside its territory.

56. This provision is not to be interpreted as requiring complete correspondence of the rules of jurisdiction of the States concerned. Article 6 requires this correspondence only insofar as it relates to the circumstances and nature of the offence for which extradition was requested. Where, for example, the requested State has jurisdiction over some offences committed abroad by its own nationals, the obligation under Article 6 would arise if it refused extradition to a State wishing to exercise a similar jurisdiction in respect of any of those offences.

For example, the United Kingdom extradition arrangements are generally based on the territorial principle. Similarly the jurisdiction of the domestic courts is generally based on the territorial principle. In general there is no jurisdiction over offences committed by nationals abroad but there are certain exceptions, notably murder. Because of this jurisdictional limitation the United Kingdom in most cases cannot claim extradition of a national for an offence committed abroad. In the reverse situation there would be no obligation for the United Kingdom under Article 6 arising from a request for extradition from a State able to exercise such a jurisdiction. If, however, the request was for extradition of a national for a murder falling under Article 1 and committed abroad, the obligation under Article 6 would apply because the United Kingdom has a similar jurisdiction in respect of this offence.

57. Paragraph 2 makes clear that any criminal jurisdiction exercised in accordance with national law is not excluded by the Convention.

58. In the case of a refusal to extradite in respect of an offence referred to in Article 2, the Convention contains neither obligation nor impediment for the requested State to take, in the light of the rules laid down in Articles 6 and 7, the measures necessary for the prosecution of the offender.

Article 7

59. Article 7 establishes an obligation for the requested State to submit the case to its competent authorities for the purpose of prosecution if it refuses extradition.

60. This obligation is subject to conditions similar to those laid down in paragraph 1 of Article 6: the suspected offender must have been found in the territory of the requested State which must have received a request for extradition from a Contracting State whose jurisdiction is based on a rule of jurisdiction existing equally in its own law.

61. The case must be submitted to the prosecuting authority without undue delay, and no exception may be invoked. Prosecution itself follows the rules of law and procedure in force in the requested State for offences of comparable seriousness.

Article 8

62. Article 8 deals with mutual assistance, within the meaning of the European Convention on Mutual Assistance in Criminal Matters, in connection with criminal proceedings concerning the offences mentioned in Articles 1 and 2. The Article lays down an obligation to grant assistance whether it concerns an offence under Article 1 or an offence under Article 2.

63. Under paragraph 1, Contracting States undertake to afford each other the widest measure of mutual assistance (first sentence); the wording of this provision was taken from Article 1.1 of the European Convention on Mutual Assistance in Criminal Matters. Mu-

tual assistance granted in compliance with Article 8 is governed by the relevant law of the requested State (second sentence), but may not be refused on the sole ground that the request concerns an offence of a political character (third sentence), the description of the political character of the offence being the same as in Article 1 (cf. paragraphs 32 and 33 of this report).

64. Paragraph 2 repeats for mutual assistance the rule of Article 5. The scope and meaning of this provision being the same, the comments on Article 5 apply *mutatis mutandis* (cf. paragraphs 48 to 51 of this report).

65. Paragraph 3 concerns the Convention's effects on existing treaties and arrangements in the field of mutual assistance. It repeats the rules laid down in Article 3 for extradition treaties and arrangements (cf. paragraphs 45 and 46 of this report).

66. The principal consequence of paragraph 3 is the modification of Article 2.*a* of the European Convention on Mutual Assistance in Criminal Matters insofar as it permits refusal of assistance "if the request concerns an offence which the requested Party considers a political offence" or "an offence connected with a political offence". Consequently this provision and similar provisions in bilateral treaties on mutual assistance between Contracting Parties to this Convention can no longer be invoked in order to refuse assistance with regard to an offence mentioned in Article 1 and 2.

Article 9

67. This Article which makes the European Committee on Crime Problems of the Council of Europe the guardian over the application of the Convention follows the precedents established in other European Conventions in the penal field as, for instance, in Article 28 of the European Convention on the Punishment of Road Traffic Offences, in Article 65 of the European Convention on the International Validity of Criminal Judgments, in Article 44 of the European Convention on the Transfer of Proceedings in Criminal Matters, and in Article 7 of the Additional Protocol to the European Convention on Extradition.

68. The reporting requirement which Article 9 lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Convention so that it may contribute to facilitating friendly settlements and proposing amendments to the Convention which might prove necessary.

Article 10

69. Article 10 concerns the settlement, by means of arbitration, of those disputes over the interpretation or application of the Convention which have not been already settled through the intervention of the European Committee on Crime Problems according to Article 9.2.

70. The provisions of Article 10 which are self-explanatory provide for the setting up of an arbitration tribunal on the lines of Article 47.2 of the European Convention for the Protection of Animals during International Transport of 13 December 1968 where this system of arbitration was for the first time introduced.

Articles 11 to 16

71. These Articles are, for the most part, based on the model final clauses of agreements and conventions which were approved by the Committee of Ministers of the Council of Europe at the 113th meeting of Deputies. Most of these Articles do not call for specific comments, but the following points require some explanation.

72. *Article 13*, paragraph 1, allows Contracting States to make reservations in respect of the application of Article 1. The Convention thus recognises that a Contracting State might be impeded, e.g. for legal or constitutional reasons, from fully accepting the obligations arising form Article 1 whereby certain offences cannot be regarded as political for the purposes of extradition.

73. The offence or offences in respect of which the reservation is to apply should be stated in the declaration.

74. If a State avails itself of this possibility of making a reservation it can, in respect of the offences mentioned in Article 1, refuse extradition. Before deciding on the request for extradition it must, however, when evaluating the nature of the offence, take into due consideration a number of elements relative to the character and effects of the offence in question which are enumerated by way of example in Article 13.1 paragraphs *a* to *c*.

Having taken these elements into account the requested State remains free to grant or to refuse extradition.

75. These elements which describe some of the particularly serious aspects of the offence were drafted along the lines of paragraph 1 of the recommendation contained in Resolution (74) 3 of the Committee of Ministers.[1]) As regards the phrase "collective danger to the life, physical integrity or liberty of persons" used in Article 13.1.*a*, examples have been given in paragraph 41 of this report.

76. If extradition is refused on the grounds of a reservation made in accordance with Article 13, Articles 6 and 7 apply.

77. Paragraph 3 of Article 13 which lays down the rule of reciprocity in respect of the application of Article 1 by a State having availed itself of a reservation, repeats the provisions contained in Article 26.3 of the European Convention on Extradition.

The rule of reciprocity applies equally to reservations not provided for in Article 13.

78. *Article 14* which is unusual among the final clauses of conventions elaborated within the Council of Europe aims at allowing any contracting State to denounce this Convention in exceptional cases, in particular if in another Contracting State the effective democratic regime within the meaning of the European Convention on Human Rights is overthrown. This denunciation may, at the choice of the State declaring it, take effect immediately, i.e. as from the reception of the notification by the Secretary General of the Council of Europe, or at a later date.

79. *Article 15* which ensures that only Members of the Council of Europe can be Parties to the Convention is the consequence of the closed character of the Convention (cf. paragraph 29 of this report).

80. *Article 16* concerns notifications to member States. It goes without saying that the Secretary General must inform States also of any other acts, notifications and communications within the meaning of Article 77 of the Vienna Convention on the Law of Treaties[2]) relating to the Convention and not expressly provided for by Article 16.

Spørgsmål 4:

»*ad art. 1.* Er de i litra a–f opremsede handlinger *udtømmende* for, hvad en kontraherende stat ikke må anse for politiske forbrydelser, for forbrydelser, der har forbindelse med politiske forbrydelser, eller for forbrydelser, der udspringer af politiske motiver?«

Svar:

Spørgsmålet kan besvares bekræftende. Der henvises til side 11 i den vedlagte explanatory report.

Spørgsmål 7:

»*Ad artikel 2.* I stk. 1 nævnes at »en kontraherende stat« kan bestemme, at andre handlinger end de i art. 1 nævnte *heller ikke* må anses for politiske forbrydelser. Er *den* kontraherende stat, som omtales, den stat, som begærer udlevering, eller er det den stat, som i givet fald skal udlevere?«

Svar:

Spørgsmålet om, hvorvidt en lovovertrædelse, for hvilken der begæres udlevering, har karakter af en politisk forbrydelse, afgøres efter almindelige udleveringsretlige principper altid af den stat, som udleveringsbegæringen er rettet til. På denne baggrund indebærer artikel 2, at en kontraherende stat kan bestemme, at den i tilfælde, hvor den modtager en udleveringsbegæring fra en anden kontraherende stat, ikke vil anse en forbrydelse af den i bestemmelsen nævnte karakter for en politisk forbrydelse. Den kontraherende stat, som bestemmelsen angår, vil med andre ord altid være den stat, som i givet fald skal udlevere. Om baggrunden for artikel 2 henvises til besvarelsen af spørgsmål 8.

Spørgsmål 8:

»Når den danske regerings forbehold kun omfatter art. 1, betyder det så ikke, at ratifikation af konventionen gennem art. 2 principielt forpligter til udlevering i tilfælde, som meget vel *kan* stride mod den gældende udleveringslovgivning, herunder udlevering for politiske forbrydelser (uden for art. 1s område) og udlevering til lande med dødsstraf?«

[1]) See Appendix.

[2]) The Vienna Convention of 23 May 1969 has not yet entered into force.

Svar:

Efter artikel 3 i den europæiske udleveringskonvention må udlevering ikke tillades for en forbrydelse, som af den stat, over for hvilken udleveringsbegæringen er fremsat, betragtes som en politisk forbrydelse. Det antages, at denne bestemmelse indebærer, at staterne efter konventionen er forpligtede til at afslå udlevering for forbrydelser, som de anser for politiske forbrydelser.

Artikel 2 i den europæiske terrorismekonvention har karakter af en fravigelse fra denne internationale forpligtelse til at afslå udlevering for politiske forbrydelser. For så vidt angår de af artikel 2 omfattede forbrydelser, indebærer bestemmelsen, at staterne i international henseende har *ret* til at foretage udlevering, uanset om de pågældende forbrydelser betragtes som politiske forbrydelser. I modsætning til artikel 1 i terrorismekonventionen vil artikel 2 derimod aldrig medføre en pligt til at foretage udlevering. Der henvises til den vedlagte explanatory report side 13, pkt. 40.

Efter dansk ret kan udlevering alene ske, når udleveringslovens betingelser er opfyldt. Udlevering for de forbrydelser, der omfattes af artikel 2, i tilfælde, hvor vedkommende forbrydelse anses for en politisk forbrydelse, ville være i strid med udleveringslovens § 5. En anvendelse af adgangen efter artikel 2 til at udlevere uanset forbrydelsens politiske karakter ville derfor nødvendiggøre en ændring af udleveringsloven. En sådan lovændring er ikke foreslået, idet regeringen ikke finder det rigtigt at gøre brug af den udleveringsret, som følger af artikel 2. Regeringens indstilling gør det imidlertid ikke nødvendigt at tage forbehold over for artikel 2, da denne bestemmelse som nævnt aldrig kan medføre pligt til at udlevere, men alene indebærer, at staterne i deres indbyrdes forhold får en udvidet ret til at udlevere.

Som det fremgår af det anførte, kan spørgsmålet besvares benægtende.

Spørgsmål 9:

»Forpligter art. 2 sammenholdt med art. 1, litra d, til udlevering, hvis hjemlandet eller gerningslandet kræver det, i tilfælde f. eks. af kidnapning eller mord *uden* politisk motiv?

Gælder forpligtelsen også, hvis modtagerlandet har dødsstraf for den pågældende forbrydelse?

Hvordan forholder en sådan forpligtelse sig til den gældende danske udleveringslovgivning?«

Svar:

Som det fremgår af besvarelsen af spørgsmål 8, indebærer artikel 2 ikke i noget tilfælde en forpligtelse til at foretage udlevering.

Spørgsmålet om udlevering for ikkepolitiske forbrydelser berøres ikke på nogen måde af artikel 2 eller af konventionens øvrige bestemmelser. Om Danmark er forpligtet til at udlevere gerningsmanden til en ikkepolitisk forbrydelse, afhænger af de danske udleveringsaftaler med andre lande, navnlig den europæiske udleveringskonvention.

Terrorismekonventionen angår heller ikke på nogen måde spørgsmålet om udlevering til lande, der har dødsstraf for den forbrydelse, for hvilken udlevering begæres. Efter udleveringslovens § 10, nr. 3, kan udlevering kun ske på vilkår, at dødsstraf ikke må fuldbyrdes for den pågældende handling. Efter de udleveringsaftaler, som Danmark har indgået med andre lande, er Danmark aldrig forpligtet til at udlevere uafhængigt af dette vilkår.

Spørgsmål 10:

ad art. 3. »Der ønskes en redegørelse for de bestemmelser i udleveringstraktater og -ordninger indgået af danske regeringer, som efter denne bestemmelse sættes ud af kraft.«

Svar:

Som det fremgår af bemærkningerne til lovforslaget, er det justitsministeriets opfattelse, at Danmark ved ratifikationen af konventionen bør gøre brug af adgangen til at tage forbehold efter artikel 13.

Såfremt Danmark ratificerer konventionen med dette forbehold, vil ingen bestemmelser i bestående udleveringstraktater eller -ordninger blive sat ud af kraft i forholdet mellem Danmark og andre kontraherende stater.

Hvis konventionen derimod ratificeres uden forbehold, vil artikel 3 medføre, at de bestemmelser i de mellem Danmark og andre kontraherende stater bestående udleveringstrakter eller -ordninger, der angår nægtelse af udlevering for politiske forbrydelser, sættes ud af kraft for så vidt angår forbrydelser, der er omfattet af konventionens artikel 1. I forholdet mellem Danmark og Europarådets

øvrige medlemsstater findes sådanne bestemmelser i artikel 3 i den europæiske konvention af 13. december 1957 om udlevering af lovovertrædere, i artikel 7 i den dansk-britiske udleveringstraktat af 31. marts 1873 og i artikel 4 i den dansk-belgiske udleveringstraktat af 25. marts 1876. Endvidere er der i den fælles-nordiske udleveringsordning, der er baseret på ensartet lovgivning i de nordiske lande, bestemmelser om udlevering for politiske lovovertrædelser. For Danmarks vedkommende findes bestemmelserne herom i § 4 i lov nr. 27 af 3. februar 1960 om udlevering af lovovertrædere til Finland, Island, Norge og Sverige.

Spørgsmål 13:

ad art. 8. »Kan ministeren bekræfte, at regeringens forbehold *ikke* gælder forpligtelsen til gensidig bistand (f. eks. bevisoptagelse, ransagning eller beslaglæggelse) i forbindelse med strafforfølgning vedrørende de i art. 1 og art. 2 nævnte forbrydelser, således at denne forpligtelse har fuld gyldighed *også* i tilfælde af politiske forbrydelser, hvor regeringen i. h. t. forbeholdet ville nægte udlevering?«

Svar:

Det bekræftes, at det i spørgsmålet anførte er korrekt.

Spørgsmål 14:

»Kan der angives nogen mere præcis grænse for, hvor langt den danske stats forpligtelser til gensidig bistand i forbindelse med strafforfølgning i andre kontraherende stater rækker?«

Spørgsmål 15:

»Kan den danske stat gennem denne konvention blive forpligtet til på begæring af en anden kontraherende stat at foretage ransagninger og beslaglæggelser hos danske statsborgere, organisationer og/eller bladredaktioner, f. eks, i tilfælde af, at den anden stat fører straffesag på grundlag af handlinger nævnt i art. 1 mod personer, som har haft forbindelse med omtalte danske statsborgere, organisationer og/eller bladredaktioner, og har formodning om ved ransagning hos de pågældende at kunne finde bevismateriale m. h. p. denne straffesag?

Kan en sådan forpligtelse også principielt forekomme i tilfælde, hvor forbrydelsen af danske myndigheder ville blive anset for en politisk forbrydelse, som ikke burde medføre udlevering? Hvilke regler gælder for begæringens grundlag? Er der hjemmel for at stille konkrete krav om kvalificeret begæring og i så fald hvilke? Har den danske stat krav på at efterprøve begæringens grundlag? Vil en begæring på samme kvalitative grundlag som den anmodning, der i slutningen af september 1977 gav anledning til terroristrazziaen ved Hvide Sande, være forpligtende?«

Svar:

Som anført i lovforslagets bemærkninger er grundlaget for Danmarks retshjælp til Europarådets medlemslande den europæiske konvention af 20. april 1959 om gensidig retshjælp i straffesager. Efter artikel 3 i denne konvention er Danmark efter nærmere angivne regler forpligtet til at imødekomme andre kontraherende staters retsanmodninger, som vedrører en straffesag, og som fremsættes med henblik på fremskaffelse af beviser eller udlevering af bevismateriale, akter eller dokumenter.

Efter konventionens artikel 2 kan en begæring om retshjælp afslås, såfremt den stat, over for hvilken begæringen fremsættes, finder, at begæringens efterkommelse vil kunne krænke den pågældende stats suverænitet, bringe dens sikkerhed i fare, stride mod dens almindelige retsprincipper (ordre public) eller skade andre livsvigtige interesser.

Efter artikel 2 kan en begæring om retshjælp endvidere afslås, såfremt begæringen angår en forbrydelse, der af den anmodede stat betragtes som en politisk forbrydelse eller en forbrydelse, der har forbindelse med en politisk forbrydelse. Såfremt Danmark, således som der er lagt op til i det foreliggende lovforslag, ratificerer den europæiske terrorismekonvention uden forbehold over for denne konventions artikel 8, vil adgangen til at afslå en begæring om retshjælp med den begrundelse, at begæringen angår en politisk forbrydelse, bortfalde for så vidt angår de forbrydelser, der er omfattet af artikel 1 og 2 i terrorismekonventionen. Danmark vil imidlertid fortsat kunne afslå en begæring om retshjælp, såfremt der er vægtige grunde til at antage, at begæringen er fremsat med det formål at tiltale eller straffe en person på grund af hans race, religion, nationalitet eller

politiske overbevisning, eller at den pågældendes retsstilling kan blive forringet af disse grunde.

Begæringer om retshjælp efter retshjælpskonventionens artikel 3 skal blandt andet angive, hvilken myndighed der fremsætter begæringen, begæringens genstand og dens begrundelse samt den pågældende forbrydelse og en kortfattet fremstilling af sagens omstændigheder. I reglen fremsættes begæringen over for justitsministeriet, som videresender sagen til vedkommende danske myndighed, såfremt betingelserne for at imødekomme begæringen skønnes opfyldt. Yderligere oplysninger vil kunne indhentes fra den begærende stat, såfremt det foreliggende materiale findes utilstrækkeligt.

De ovennævnte regler gælder også retsanmodninger om ransagning eller beslaglæggelse. Herudover gælder der enkelte særregler for retsanmodninger af denne karakter. For Danmarks vedkommende indebærer disse regler navnlig, at et andet lands begæring om ransagning eller beslaglæggelse kun kan imødekommes, når dansk rets betingelser for at foretage sådanne retsskridt er opfyldt.

Det fremgår blandt andet af det anførte, at den danske stat allerede efter de gældende regler i den europæiske retshjælpskonvention kan blive forpligtet til at foretage ransagning eller beslaglæggelse på begæring af et andet Europarådsland. I forhold til disse regler indebærer terrorismekonventionen den ændring, at en sådan begæring, når den fremsættes til brug for en straffesag vedrørende en af denne konvention omfattet forbrydelse, ikke kan afslås med den begrundelse, at forbrydelsen er af politisk karakter. Bortset herfra vil omfanget af den danske stats forpligtelse til at imødekomme en retsanmodning om ransagning eller beslaglæggelse fra et andet Europarådsland, også når det drejer sig om en af terrorismekonventionen omfattet forbrydelse, som hidtil afhænge af de ovennævnte regler og betingelser i den europæiske retshjælpskonvention. Det følger blandt andet heraf, at en retsanmodning om ransagning eller beslaglæggelse fra en kontraherende stat kun vil kunne imødekommes, når betingelserne i retsplejelovens kapitel 68 og 69 er opfyldt. Ransagning eller beslaglæggelse på begæring af en anden kontraherende stat vil således som regel kun kunne foretages efter retskendelse.

For så vidt angår den i spørgsmål 15, sidste punktum, nævnte eftersøgning kan det oplyses, at rigspolitichefen den 27. september sidste år fra de tyske politimyndigheder modtog en anmodning om at lade foretage en undersøgelse vedrørende nogle nærmere angivne personer, der var eftersøgt for bl. a. drab i Tyskland. Denne meddelelse blev videresendt til politimesteren i Ringkøbing, som traf bestemmelse om iværksættelse af en undersøgelse af sagen. Der forelå i dette tilfælde ikke en forpligtende retsanmodning fra en udenlandsk myndighed. Undersøgelsen skete alene efter de danske politimyndigheders bestemmelse.

Spørgsmål 16:

»Kan den danske stat undslå sig for den omtalte bistand ved strafforfølgning alene med henvisning til, at en sådan bistand kan blive afgørende for, at den anklagede dømmes til døden?«

Svar:

Den europæiske konvention om gensidig retshjælp i straffesager indeholder ikke bestemmelser om, at en begæring om retshjælp skal angive den straf, der kan idømmes den person, mod hvem en strafferetlig undersøgelse er rettet. Der stilles heller ikke krav om, at begæringen skal angive den betydning, som den begærede retshjælp kan forventes at få for udfaldet af straffesagen i den begærende stat. På denne baggrund har den anmodede stat i reglen ikke mulighed for at bedømme, hvorvidt imødekommelse af en retsanmodning vil kunne føre til, at en person i udlandet idømmes en bestemt straf.

Det følger af det anførte, at en anmodning om retshjælp efter de gældende regler i den europæiske retshjælpskonvention ikke kan afslås med henvisning til, at en sådan bistand kan blive afgørende for, at den anklagede dømmes til døden. Heller ikke den europæiske terrorismekonvention giver adgang til at afslå retshjælp med en sådan begrundelse.

Spørgsmål 17:

ad artikel 13. »Ville den danske stat uden at have taget det her nævnte forbehold overfor art. 1 have været forpligtet til at udlevere i. h. t. litra d, hvis de pågældende udlændinge ønskedes retsforfulgt i en anden kontraherende stat for »ulovlig frihedsberøvelse« af

samme art og under samme omstændigheder som de faglige aktioner ved Hope Computer i 1974?«

Svar:

De forbrydelser, der efter artikel 1, litra d, i forbindelse med udlevering ikke kan anses for en politisk forbrydelse, er i bestemmelsen angivet som »forbrydelser, der indebærer bortførelse, gidseltagning eller grov, ulovlig frihedsberøvelse«. Bestemmelsen omfatter således kun ulovlig frihedsberøvelse af grov eller alvorlig karakter. Kommentaren til artikel 1, litra d, i den vedlagte »explanatory report«, side 12, punkt 37, indeholder ikke nærmere bidrag til fortolkningen af bestemmelsen. Efter justitsministeriets opfattelse må det imidlertid anses for utvivlsomt, at en handlemåde af den karakter, som forelå for vestre landsret i sagen om en demonstration foran virksomheden Hope Computer (Ugeskrift for Retsvæsen 1974, 591), ikke er omfattet af bestemmelsen.

Spørgsmål 18:

ad artikel 13. »Kunne den danske stat med henvisning til forbeholdet overfor art. 1 have nægtet at udlevere den vesttyske advokat Klaus Croissant, hvis denne havde opholdt sig her i landet og konventionen havde været ratificeret af Vesttyskland og Danmark?

Hvad skulle Croissant i så fald have været strafforfulgt for her i landet?

Er det overvejende sandsynligt, at den danske regering ville have valgt denne fremgangsmåde i dette tænkte, men helt konkrete tilfælde?«

Svar:

Et forbehold over for konventionens artikel 1 i medfør af artikel 13 indebærer, at den pågældende stat er forpligtet til at lade de omstændigheder, som gør forbrydelsen særlig alvorlig, herunder forskellige nærmere angivne forhold, indgå i bedømmelsen af, om den pågældende forbrydelse har karakter af en politisk forbrydelse. Som anført i lovforslagets bemærkninger side 4 indgår sådanne omstændigheder imidlertid allerede efter gældende dansk ret i bedømmelsen af, om en forbrydelse har karakter af en politisk forbrydelse. For Danmarks vedkommende vil en tilslutning til konventionen med forbehold efter artikel 13 således ikke i forhold til den gældende lovgivning medføre nogen ændring i adgangen til at nægte udlevering for politiske forbrydelser.

Det følger af det anførte, at Danmark i den i spørgsmålet angivne situation ville kunne have nægtet at udlevere advokat Klaus Croissant til de vesttyske myndigheder, såfremt de forhold, som han er sigtet for i Vesttyskland, efter udleveringslovens § 5 måtte anses for politiske forbrydelser.

Justitsministeriet har ikke kendskab til det nærmere indhold af de sigtelser, som er rejst mod advokat Klaus Croissant i Vesttyskland. Det er derfor ikke muligt at vurdere, om de strafbare forhold, som han er sigtet for, i givet fald efter udleveringslovens § 5 måtte anses for politiske forbrydelser.

Af samme grund er det ikke muligt at besvare spørgsmålet om, hvad Klaus Croissant efter eventuelt at være nægtet udleveret skulle strafforfølges for her i landet.

Spørgsmålet om, hvilken fremgangsmåde den danske regering ville have valgt i den angivne hypotetiske situation, kan allerede som følge af det ovenfor anførte ikke besvares.

Spørgsmål 19:

ad artikel 14. »Kan opsigelsen ske straks, også hvis den meddeles under en verserende strid med en anden kontraherende stat om forpligtelser til udlevering eller til bistand i. h. t. art. 8?«

Svar:

Efter artikel 14 kan konventionen til enhver tid opsiges, således at opsigelsen har virkning umiddelbart fra det tidspunkt, hvor den skriftligt er meddelt Europarådets generalsekretær. Spørgsmålet kan derfor besvares bekræftende. Opsigelsen har virkning også for sager, der verserer på opsigelsens tidspunkt.

Svaret er tiltrådt af udenrigsministeriet.

Spørgsmål 25:

»På et EF-indenrigsministermøde i sommer skulle spørgsmålet om udlevering af terrorister være drøftet. Blev der truffet nogen beslutning på dette møde?«

Svar:

Den 31. maj 1977 blev der i London afholdt et møde om terrorbekæmpelse med deltagelse af indenrigsministre (eller justitsministre med tilsvarende arbejdsområde) fra EF-landene. Fra dansk side deltog justitsministeren. Der blev på mødet vedtaget en ministerresolution om politimæssigt samarbejde vedrørende terrorbekæmpelse m. v. Spørgsmålet om udlevering af terrorister blev ikke drøftet på mødet, og der blev ikke truffet nogen beslutninger herom.

Som led i det politiske samarbejde mellem EF-landene har spørgsmålet om udlevering af terrorister derimod været drøftet i et særligt embedsmandsudvalg under EF-formandskabet. Udvalgets drøftelser, der endnu ikke er afsluttede, har hidtil koncentreret sig om mulighederne for at gennemføre en ordning, hvorved den europæiske terrorismekonvention hurtigt sættes i kraft i forholdet mellem EF-landene.

Spørgsmål 27:

»Betyder besvarelsen af spørgsmål 18, at det danske forbehold over for art. 1 principielt kan forbigås ved, at det land, som kræver udlevering, sørger for at rejse sigtelse for forhold, som ikke efter den danske udleveringslovs § 5 må anses for politisk forbrydelse?«

Spørgsmål 29:

»Vil Danmark ved udlevering på grundlag af en sigtelse for en ikke-politisk forbrydelse kunne betinge sig, at den udleverede ikke derefter retsforfølges for politiske forbrydelser begået før udleveringen?«

Svar:

Efter den såkaldte specialitetsregel i artikel 14, stk. 1, i den europæiske udleveringskonvention kan den stat, til hvilken udlevering er sket, *ikke* indlede strafforfølgning mod den udleverede person eller i øvrigt foretage nogen begrænsning i hans personlige frihed *for nogen anden forud for overførelsen begået forbrydelse end den, han er udleveret for.* Undtagelse fra denne regel gælder alene i tilfælde, hvor den udleverende stat giver samtykke hertil, samt i tilfælde, hvor den pågældende person efter at have haft mulighed for at forlade den stat, til hvilken han er udleveret, ikke har gjort dette inden for 45 dage efter den endelige løsladelse, eller hvor han er vendt tilbage til den pågældende stats territorium efter at have forladt det.

Tilsvarende bestemmelser findes i samtlige gældende udleveringsaftaler mellem Danmark og de øvrige Europarådslande.

På linie med de ovennævnte konventions- og traktatbestemmelser indeholder udleveringsloven i § 10, nr. 1, følgende regel:

»Udlevering kan kun ske på følgende vilkår:

1) Den udleverede må ikke drages til ansvar eller udleveres videre til tredjeland for nogen anden strafbar handling begået før udleveringen end den, han er udleveret for, medmindre
   a) justitsministeren tillader det efter § 20,
   b) han, uanset at han i 45 dage uhindret har kunnet forlade det land, hvortil han er udleveret, har undladt dette, eller
   c) han efter at have forladt landet frivilligt er vendt tilbage.«

En i det væsentlige tilsvarende regel findes i den fællesnordiske udleveringslovgivning.

Det følger af de ovennævnte regler, at et land, til hvilket Danmark har udleveret en person for en ikke-politisk forbrydelse, (når der bortses fra de nævnte meget snævre undtagelsestilfælde) *ikke* har adgang til efter udleveringen at rejse sigtelse for en politisk forbrydelse, som er begået før udleveringen. Spørgsmål 27 kan således besvares benægtende.

Særligt med hensyn til spørgsmål 29 bemærkes, at den i spørgsmålet nævnte betingelse er omfattet af det vilkår, som efter udleveringslovens § 10, nr. 1, altid *skal* stilles i forbindelse med udlevering.

Spørgsmål 28:

Hvis en sådan sigtelse for ikke-politisk forbrydelse er rejst side om side med sigtelser for forhold, som efter den danske udleveringslovs § 5 må anses for politisk forbrydelse, vil Danmark da kunne nægte udlevering på grundlag af de sidst nævnte forhold, eller vil det andet land kunne begære udlevering på grundlag af den førstnævnte sigtelse?«

Svar:

Hvis en person, der opholder sig her i landet, begæres udleveret med henblik på strafforfølgning dels for en politisk forbrydelse,

dels for en ikke-politisk forbrydelse, skal udlevering for så vidt angår den politiske forbrydelse naturligvis afslås efter udleveringslovens § 5. Såfremt Danmark har indgået en udleveringsaftale med det udleveringsbegærende land og der ikke foreligger andre afslagsgrunde, vil Danmark derimod ikke kunne afslå at udlevere den pågældende person til strafforfølgning for den ikke-politiske forbrydelse. Det følger imidlertid af den i besvarelsen af spørgsmål 27 og 29 omtalte specialitetsregel, at den pågældende person efter at være blevet udleveret ikke vil kunne strafforfølges for den politiske forbrydelse i det land, hvortil han er udleveret.

Det skal tilføjes, at der i tilfælde af den drøftede karakter vil være særlig anledning til at overveje, om udleveringsanmodningen vedrørende den ikke-politiske forbrydelse må anses for fremsat med det formål at tiltale eller straffe den pågældende person på grund af hans politiske overbevisning, eller om hans stilling efter en eventuel udlevering kan blive forringet af denne grund. Er der vægtige grunde til at antage, at dette er tilfældet, skal udleveringsanmodningen afslås også for så vidt angår den ikke-politiske forbrydelse, jfr. den europæiske udleveringskonventions artikel 3, stk. 2, og terrorismekonventionens artikel 5.

Spørgsmål 36:

ad besvarelse af spørgsmål 25. »Udvalget udbeder sig ministerresolutionen af 31. maj 1977.«

Svar:

Som anført i justitsministeriets besvarelse af spørgsmål 25 drøftede man på det nævnte ministermøde i London den 31. maj 1977 ikke spørgsmål vedrørende udlevering af terrorister, ligesom der heller ikke på mødet blev truffet nogen beslutninger herom.

På det pågældende minstermøde drøftede man de spørgsmål vedrørende terrorbekæmpelse m. v., som er nævnt i vedlagte pressemeddelelse fra mødet.

Justitsministeriet ser sig ikke i stand til at udlevere den under mødet vedtagne resolution, idet selve resolutionen er klassificeret som fortrolig.

Conference of
Ministers of the Interior
Press Communique

At their meeting in Luxembourg in June 1976 Ministers of the Interior, and Ministers of Justice having similar responsibilities, of the Member States of the European Community agreed on a programme of work to be carried out by officials to strengthen co-operation on matters arising in the field of their responsibilities, in particular with regard to law and order. Ministers held a second meeting in London on 31st May in order to review progress and commission further work. Ministers noted with satisfaction that existing co-operation between Member States had been greatly strengthened through the activities of the Working Groups of experts that had been set up to implement the programme agreed at Luxembourg. They endorsed proposals by officials for developing practical and effective measures to cope with problems which transcend national boundaries, taking due account of the activities of other international bodies.

Ministers reached the following conclusions on the areas under consideration by officials:

1. Ministers reaffirmed that terrorism is a crime, from whatever motive it is practised, and should be treated as such; but they recognised that it posed special problems for law enforcement and security agencies. They welcomed arrangements proposed to strengthen and develop the exchange of information about terrorist activities and techniques for handling major terrorist incidents. Ministers stressed the importance of the closest possible co-operation between the relevant agencies in each country in the exchange of information about activities of terrorist and subversive groups. Ministers agreed that in the event of an imminent threat of terrorist action, the authorities in the countries concerned should take immediate co-operative action as necessary.

2. Ministers agreed that representatives of Member States should continue to discuss matters of common concern in combating international terrorism (a number of which, such as traffic in arms, were specifically identified during the course of the meeting) and to evaluate the experience gained by

Member States in handling previous terrorist incidents.

3. Ministers welcomed arrangements for establishing working groups of experts in the technical field and agreed that arrangements should be put in hand for the exchange of police personnel and for the convening of conferences of experts to consider aspects of police training.

4. They agreed on arrangements proposed for developing cooperation between Member States in the field of civil aviation security.

5. They agreed that a working group of experts should be set up to provide for the exchange of views, information and experience on all aspects of measures against fire and other related tasks.

6. They instructed Senior Officials to put in hand arrangements to implement these conclusions and to report back to a further meeting of Ministers.

Spørgsmål 39:

»Det bedes oplyst, om ministeren er i besiddelse af oplysninger om, på hvilket stadium de øvrige EF-lande befinder sig med hensyn til ratifikation om konvention. Herunder bedes det om muligt oplyst, om forbehold tænkes taget i relation til artikel 1 og 8, ligesom det bedes oplyst, om noget land i forbindelse med undertegnelse har taget forbehold.

Det bedes endvidere oplyst, om der kan gives yderligere oplysninger om Norges stillingtagen.«

Svar:

Forbeholdserklæringer i forbindelse med konventionens undertegnelse er afgivet af Frankrig, Italien, Norge og Portugal. Ordlyden af de pågældende landes erklæringer vedlægges.

Justitsministeriet er ikke i besiddelse af mere præcise oplysninger om, på hvilket stadium EF-landene befinder sig med hensyn til ratifikation af konventionen. På baggrund af de mundtlige tilkendegivelser, der er fremkommet under EF-landenes drøftelser vedrørende bekæmpelse af terrorisme, er det dog muligt at danne sig et vist indtryk af stillingen i de forskellige EF-lande.

Fra *vesttysk* side er det under EF-drøftelserne oplyst, at den vesttyske justitsminister har fremsat lovforslag med henblik på tiltræden af konventionen, og at det forventes, at behandlingen af lovforslaget i forbundsdagen vil være afsluttet således, at Vesttyskland vil kunne ratificere konventionen i løbet af foråret eller sommeren 1978. Efter de vesttyske tilkendegivelser må det antages, at Vesttyskland sigter på at ratificere konventionen *uden* forbehold.

Der er ikke under EF-drøftelserne givet tilsvarende klare oplysninger om stillingen i *Belgien, England, Holland og Luxembourg.* Efter de tilkendegivelser, der er fremkommet fra disse lande, må man imidlertid gå ud fra, at de pågældende fire lande er indstillet på at ratificere konventionen *uden* forbehold i løbet af ret kort tid.

EF-drøftelserne har ikke givet noget klart indtryk af, hvornår *Italien* kan forventes at ratificere konventionen. Der synes imidlertid ikke at være tvivl om, at Italien er indstillet på at tiltræde konventionen. Man må vist nok gå ud fra, at man fra italiensk side regner med at tage forbehold over for konventionens artikel 1 og 8 i forbindelse med ratifikationen.

Stillingen i *Frankrig og Irland* synes at være den, at ingen af disse lande er indstillet på foreløbig at ratificere konventionen.

Med hensyn til Norge bemærkes, at der ikke siden besvarelsen af udvalgets spørgsmål 35 er fremkommet nye oplysninger om de norske overvejelser.