

MEMORANDUM
for the Cabinet

by the Hon. Minister of Justice and Parliamentary Affairs on the Bill relating to Extradition between Commonwealth Countries.

History

1. Extradition between the former parts of the British Empire was governed by the United Kingdom Fugitive Offenders Act, 1881, which applied also to Malta. The said Act was obviously designed to deal not with extradition between independent sovereign states, but with the transfer of offenders between the different parts of a single Empire. In the changed circumstances of to-day its provisions no longer seem appropriate and the Meeting of Commonwealth Law Ministers which took place in London in 1966, at which the Minister of Justice and Parliamentary Affairs was represented by the Crown Advocate-General, was convened in order that the Ministers of Justice of the various Commonwealth countries might reach agreement on a common scheme of legislation. The object of the Meeting was achieved and a common scheme agreed upon. The United Kingdom and Australia have already implemented such scheme by the enactment of the Fugitive Offenders Act, 1967 and of the Extradition (Commonwealth Countries) Act, 1966, respectively. In all the circumstances, it is more than appropriate that Malta should take urgent steps to enact its own legislation to replace the outdated Fugitive Offenders Act, 1881.

Scope of the present Bill

2. The scope of the present Bill is to enable the Government of Malta to surrender to another Commonwealth country, who makes a request to that effect, a person who is in Malta and is charged with or was convicted of an extradition offence in that country. This, of course, operates on a reciprocal basis since other Commonwealth countries are expected to make corresponding legislation which in similar circumstances will enable them to surrender to Malta persons who are in those countries and are charged with or were convicted of an extradition offence in Malta.

Extradition offences

3. An offence is an extradition offence if it is one of the offences listed in the First Schedule to the Bill and if it is an offence which is punishable under the law of the requesting country with imprisonment for a term of twelve months or any greater punishment. This ensures that extradition operates only in respect of the more serious offences.

In the list of extradition offences appended to the scheme agreed upon at the Meeting mentioned above there is included "contravention of import or export prohibitions relating to precious stones, gold and other precious metals". With regard to this offence, the inclusion whereof was insisted upon by the delegate of India, the Crown Advocate General expressly reserved Malta's position at the Meeting and, as a matter of fact, he has not included it in the list of extradition offences contained in the First Schedule to the Bill as he considers that extradition in respect of this category of offences should not apply any more than it applies in respect of offences of a fiscal nature. But it is for the Cabinet to decide whether such category of offences should be accepted or not as an offence giving place to extradition.

Safeguard of fundamental rights

4. The Bill contains provisions intended to afford full protection to the individual - by the outright denial of extradition - if a person is wanted to be tried for or because he was convicted of, an offence of a political character, or if he is wanted for the purpose of being prosecuted or punished on account of his race, place of origin, nationality, political opinions, colour or creed, or even if it appears that he might be prejudiced at his trial or punished for any of these reasons.

Speciality rule

5. Provision is made in the Bill in order

to ensure that a person who has been returned to a Commonwealth country is not tried in such country for an offence committed prior to his return unless it is the offence for which he was returned or any lesser offence proved by the facts on which the return was grounded or, in the case of another extradition offence, unless there is the consent of the Government of Malta.

Similar provision is made in the Bill so that the same principle shall apply in regard to a person returned to Malta from a Commonwealth country.

Death penalty

6. The question of the extradition of offenders who might suffer for their crime the death penalty in the requesting country was a much debated point at the said Meeting. Countries who do not have the death penalty in their criminal legislation or have it in a very restricted field affirmed that there should be no extradition where the offender was liable to the death penalty if he was surrendered to the requesting country. On the other hand countries who still have the death penalty in their criminal legislation, Malta included, contended that it would be absurd to exclude extradition in respect of those crimes which, exactly because they are punishable in certain countries with the death penalty, are the most serious crimes. Finally, a compromise proposed by the Crown Advocate-General was accepted, in the sense that it would not be mandatory on the requested country not to grant extradition in similar cases in order that such country might consider the possibility of granting extradition upon an assurance given by the requesting country to the effect that the death penalty would not be enforced in any such specific case.
(Official records of the Meeting pages 92-97)

Section 9(4) of the United Kingdom Fugitive

Offenders Act, 1967, accordingly contains the following provision:-

"The Secretary of State may decide to make no order under this section in the case of a person accused or convicted of a relevant offence (i.e. extradition offence) not punishable with death in Great Britain if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made."

A similar provision (sect. 10(5)) has been included in the draft Bill being submitted to the Cabinet, since there may be crimes which in Malta are not punishable with the death penalty but are so punishable in other Commonwealth countries.

The inclusion of this provision in the Draft Bill will certainly give occasion in the House of Representatives for the expression of views on the death penalty and will elicit criticism on the delay of Government in keeping its promise to bring up the matter for discussion by Parliament through ad hoc motion.

Machinery for extradition and procedure

7. The Bill contains provisions as to the machinery of the extradition. Proceedings of extradition are only possible if the Minister responsible for Justice grants authority to proceed. The granting of such authority is not within the Minister's absolute discretion but is governed by rules intended to safeguard the fundamental rights of the individual. When authority to proceed is granted, the Court of Magistrates will commit a person to custody to await his return to the requesting country only if the Court is satisfied, on the strength of the evidence produced before it, that such evidence would be sufficient to warrant

L-ARKIVI NAZZJONALI TA' MALTA

such person's trial for the offence in respect of which extradition has been asked had such offence been committed in Malta, or if the Court is satisfied, on the strength of the evidence produced, that a fugitive offender has already been convicted of an extradition offence in the requesting country.

Restoration of persons not tried
or acquitted

8. A special provision in the Bill is intended to ensure that, if a person is returned to Malta from a Commonwealth country in order to be tried for an extradition offence and if proceedings against him are not begun within three months of his arrival or if he is acquitted or discharged absolutely or conditionally, the Minister may, if he thinks fit, on request of that person arrange for him to be sent back free of charge to the country from which returned.

Conclusion

The main features of the attached draft Bill having been set out, Hon. Ministers are requested to approve that the said Bill be presented to Parliament and to decide, in particular by reference to the question raised in paragraph 3, whether they agree that the contravention of import or export prohibitions relating to precious stones, gold and other precious metals, should be excluded from the list of extradition offences, and, by reference to the question raised in paragraph 6, whether the provision anent the death penalty should be included in the Bill.

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