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Non-Extradition Of a Person Accused of Terrorism

In the United Kingdom

The President: I now call on Mr. Gol to address the Prime Minister; the Deputy Prime Minister and Minister of Justice & Small Firms & Trades; and the Minister for External Relations on the decision not to extradite a person accused of terrorism to the United Kingdom and Belgian policy on the European judicial area.

Mr. Gol: A year has passed since the last legislative elections took place. As the former Minister of Justice I wish to refer to a recent event which calls into question the credibility and the international image of our country.

I have followed with interest the progress of the new Minister of Justice. While I do not always share his point of view, I have noted a continuity in the context of our country's image abroad.

I was very surprised therefore, by the Government's decision of Friday last which calls into question the agreements on European Cooperation in the fight against terrorism, crime and drug traffic as well as the agreements on the establishment of a European judicial area.

The policy of cooperation in the fight against terrorism is an important element in the construction of Europe. The Ministers have frequently re-affirmed the necessity of such cooperation.

The European Convention of Strasbourg (1977) and the 1979 Dublin Convention are binding on all European States. The Belgian Conventions on terrorism, and all the countries which are members of the Council of Europe and of the EEC have either ratified or have initiated the process of ratification of these Conventions, including Ireland, Greece and Malta. I fail therefore to understand the decision of the Government which has violated this Convention after having urged its partners to ratify it.

What can have induced the Government to take such a decision?

First 'reason' (put forward by you): the first offence for which extradition was requested is not covered by the extradition treaty between the United Kingdom and Belgium. This is a legal argument. The Chambre des mises un accusation (Grand Jury) delivered a legal opinion in which, according to our information, three charges were rejected and one was accepted. On a legal plane it is surprising that the Government should go against this opinion.

Second 'reason' put forward by you: you claim not to have sufficient evidence against the accused to justify his being handed over to the United Kingdom. Certain suspicions, however, are a sufficient basis for an extradition request. The Government doesn't have to make a substantive ruling. That would have been the task of the British judicial authorities.

Third reason (put forward): Article 5 of the European Convention which states that decisions to extradite should not be based on nationality, religion, race etc.

This is the 'legitimate suspicion' clause.

Have you reasons for thinking that British justice is not capable of fairly trying a person extradited to Britain?

The British judicial authorities considered that they could extradite their own nationals, regarding our judicial system as equal to theirs. Do you believe that their justice is not as good as ours?

The European integration process presupposes that the Twelve Member States are equal in law and in value. If you believe that British justice is bad, you should question the appropriateness of British membership in our Community.

I trust that you have no doubts about the quality of British justice.

Mr. Mottard: You have given us assurances in this matter for many years.....

Mr. Gol: You could have relied on Article 13 of Convention on terrorism and decided that the offences concerned are political. In that case, however, you could have cited another Article of that Convention, under which, where extradition is refused, the detained person would have had to be tried in Belgium.

I am very surprised, therefore by your decision for which I can see no legal basis. At worst it reveals a change of policy in the construction of Europe, at security level, and at best, (it is based on) a fear of reprisals. The latter is of little consequence and I trust that you're not going to give us this deplorable excuse.

I should like to recall a decision reached by the Belgian Government in 1984 - prior therefore to its ratification of the Convention on terrorism - in an equally delicate case concerning Basque terrorists, whose extradition was requested by Spain. At the time the Chambre des mises en accusation advised in favour of extradition and this was acted upon by the Government. It did not refuse extradition, citing the democratic character of the requesting country and its membership of the Council of Europe. Do you consider that the United Kingdom is not a democratic country? Have you even discussed the matter with her?

The reality is that this (your action) deals a new blow to the credibility of Belgium on the eve as it were of the Rhodes Summit, at which we must put up a good show.

In the context of this Summit, the European Parliament has adopted a resolution, by 120 votes for to 7 against, with 2 abstentions, which refers clearly to European internal security and calls for stronger measures to combat terrorism.

On Saturday a meeting took place in Montzeller between Messrs. Mitterand and Gonzales. On that occasion Mr. Mitterand declared: "There must be absolute solidarity in the fight against terrorism....".

You, however, are today in the vanguard of the Europe of "claptrap" and "general consideration". When it comes to dealing with real problems, you only believe in a "Euro-cop-out". You do your homework as good Europeans, but you don't translate it into deeds! You have handed the hot potato to Ireland, which could well have done without it, and will now be in trouble.

The United Kingdom is also anything but happy!

The Times emphasizes that it is not your job to decide whether Mr. Ryan is innocent, but to ensure that he goes before his judges. Your behaviour is laughable at European level and narrowly nationalist.

The last argument which might be put forward by the Government is the humanitarian one, on the basis that the person concerned is on hunger strike.

At a recent trial in Brussels, prisoners went on hunger strike to protest against their conditions of detention and their isolation and the Minister of Justice refused to alter these conditions during the trial. This was the right approach. To do anything else would be to give a signal to terrorists throughout the world that Belgium has become the dreamed-of country of asylum. It would also convince persons who want to obtain some concession that the surest way of getting it is to go on hunger strike.

These decisions you have made will not enhance your image, Mr. Prime Minister, at the Rhodes Summit. It will furthermore deprive the Minister of Justice of credibility as regards the 'avant garde' policy in the creation of a European legal area which Belgium wants to give to pursue.

This is an illustration of Government vacillation, its inability to take decisions in a whole range of fields, which will deprive Belgium of the small degree of international respect to which it is entitled.

Mr. Wathelet: Vice Premier and Minister of Justice & Small Business:

I wish to emphasise that our decision was based on legal grounds, and on the examination of the particular dossier concerned, and was not subjected to external considerations.

Mr. Motthard A legal problem is involved. Why is it not being discussed by the External Relations Committee?

Mr. Wathelet: Your arguments were not the decisive ones, Mr. Gol. We had an individual dossier to examine at legal level. No Euro-fear or Euro-jitters were involved. And we were not swayed by a hunger strike, nor by the arguments you put forward on the quality of British justice, nor the European argument, and

certainly not by that of asylum or the European Convention on terrorism (Arts. 13 and 5). What we did was to examine an individual dossier on the basis of our law.

Mr. Patrick Ryan was the subject of an arrest warrant on 30 June 1988 and of a preliminary investigation for having a false passport and for an offence against the law relating to explosives. With regard to this file when the preliminary investigation by the examining magistrate was completed the person concerned was granted a conditional discharge on 1 November, 1988.

It was only on 5 September, 1988 that the British authorities sent via Interpol an unofficial copy of an arrest warrant with a view to extradition. On 6 November, 1988, the Belgian examining magistrate, on the requisition of the Public Prosecutor, issued only a provisional arrest warrant on a charge of "conspiracy".

On 20 September, 1988 the British authorities sent the extradition request. This request is supported by two identical arrest warrants of 5th and 15th September, 1988.

Two exequatur orders relating to these arrest warrants were made on 26th and 22nd September 1988 respectively by the Court Chamber of First Instance in Brussels.

The order of the Grand Jury of the Brussels Court of Appeal of 12 October 1988 confirmed the two orders of the Court Chamber following the appeal by Patrick Ryan.

Mr. Ryan lodged an appeal against the decision of the Grand Jury. The opinion of the Grand Jury of the Brussels Court of Appeal was delivered on 1 November 1988. On 25th November 1988 the Government decided not to accede to the request by the United Kingdom for the extradition of Irish national Patrick Ryan but to turn him over to the Minister of Justice with a view of repatriation to his country of origin.

I wish now to point out to you the reasons for the refusal of the Government to extradite. The charges forming the basis of the request for extradition were: conspiracy to commit a murder, conspiracy to commit bombings, possession of explosives with a view to commit murder and cause damage, and the possession of explosives for an unlawful purpose. Article 3 of the Law on Extradition provides that documents from another country in support of the extradition request be made enforceable by the Court Chamber of the Court of First Instance. The exequatur, while a preliminary requirement for extradition, is an absolute requirement.

The Court Chamber has the task of establishing if the facts contained in the arrest warrant are covered by Belgian law.

(Continuing in Dutch)

Before granting the exequatur, the Court Chamber must examine the documents submitted. The Court Chamber must also check that the general conditions for extradition are met and ensure that the listing of the alleged offences is complete.

(Continuing in French)

So much for the exequatur . As for the nature of the facts a comparative examination of the "values" of both countries will be necessary. The exequatur was only granted on the basis of conspiracy.

(Continuing in Dutch)

Even, if the session of the Grand Jury is public, the opinion must be given in camera. Be that as it may, the executive authority must freely make its decision.

M. Gol: I want to ask you a very specific question: Is the opinion of the Grand Jury secret or does the Grand Jury advise you against extradition on legal grounds?

M. Wathelet: Deputy Prime Minister and Minister for Justice & Small Business: I cannot answer that question. The Government found that the exequatur only admitted one of the charges, that of conspiracy.

In Belgian law, conspiracy, in order to be admissible, implies a group of people, that there is an organisation of these people for the purpose of causing injury to persons or damage to property.

Now, in the arrest warrants from the British authorities, the last two charges which are only ones identifiable as conspiracy, used in the exequatur, are worded as follows:

At various times between 21 May 1975 and 1 July 1988 within the jurisdiction of the Central Criminal Court for England and Wales conspired with other persons unknown to murder other persons;

At various times between 1 February 198 and 1 July 1988 within the jurisdiction of the Central Criminal Court for England and Wales conspired with other persons unknown to cause, by using explosive substances, explosives to endanger the lives of others and cause serious damage to property in the United Kingdom:

The exequatur was given on the basis of the fact that "he conspired with persons unknown". The concept of "conspiracy" does not involve in British law the need for a charge. You, yourself, wanted to provide in Article 2 of the Agreement with the Americans these two possible charges for extradition: conspiracy or "plot".

That was on 23rd September, 1988. We were in tempore non suspects.

It is necessary to define the balance between these two concepts.

It is not a matter of a lack of European solidarity but a decision based on strict legal principles. It was that which decided us. To the limit of the law decides, we must not have any sentiments.

From the time that a single charge was made in the exequatur and that the double charge was missing, we had not to go as far as examining Article 5 of the European Convention on Terrorism. The same with regard to Article 13 of this Convention which concerns political offences. We had not to examine it. You say that these elements should not arise between Members of the European Community even if I am not obliged to, I am returning to your remarks on the two other charges which were not enforced. The possession of explosive substances was accepted at the time of arrest on 30 June 1988 : electronic controls, and clockwork mechanisms etc.

Patrick Ryan who was arrested on 30 June, was coming from Spain but was already the subject of a preliminary investigation in Belgium in relation to the same facts. The facts dating from 21 January 1982 were prescribed.

You talk then of the Irish embarrassment. Mr. Ryan was not on a regular stay in Belgium and at the time he was not certain that he was an Irish citizen.

We consulted Ireland which sent a new passport to Mr. Ryan confirming therefore his nationality.

I recall the opinion of the Commissioner on Refugees and Stateless persons, which was not in favour of giving him the status of a political refugee. I therefore refused to grant him the status of a political refugee, and I said that I linked his position to extradition. According to some press information which I have not been able to verify, it appears that Ryan had also been intercepted in France, the Netherlands and Switzerland, countries which did not detain him. Our concerns was not to be guided by a political decision. I was guided solely by the objective and close analysis of an individual dossier. In other words, I was guided by the law. That is my legal reasoning. The matter could not be decided otherwise if our laws were to be observed. That is Euro-law and not Euro-fear!

Mr. Gol I want, Minister, to give the benefit of good faith to your purely legal concerns. I am, however, surprised that the Cabinet had to consider the matter for several hours last Friday; this leads one to believe that the Government was concerned with other arguments.

Mr. Wathelet Deputy Prime Minister, Minister for Justice & for Small Business have you read the Government's communique? It mentioned precisely the legal arguments which I have outlined. There is nothing else, nor any statement of any other kind.

Mr. Gol Extradition is primarily a political act; nobody denies that it should, however, be based on law, and certain conditions should be observed.

The Minister for Foreign Relations in the last resort takes the decision to hand over somebody to a country requesting his extradition. The conditions are verified by the Court Chamber and by the Grand Jury which delivers a legal opinion. I do not dispute your right to keep that opinion secret. But we lack an

essential component for adopting your decision. Nor can you claim that that opinion was negative on some counts.

In short, Minister, you are resorting to legal quibbling to justify your refusal to grant extradition.

In this matter you are satisfied with a passive attitude. In the case of the Heysel Stadium the British authorities for their part did everything to "clear the way" so that they could extradite their nationals.

Mr. Wathelet Deputy Prime Minister, Minister for Justice & for Small Business, I agree with Mr. Gol that extradition is a political decision. The main thing is to know which legal conditions have to be fulfilled. In England the decision is, if I am not mistaken, taken by the House of Lords, not by the Government.

Belgium did not fail to meet its obligations as Mr. Ryan was arrested here, which was not the case elsewhere.

Great Britain sent its application for extradition with some delay. It is not for me to tell England how to draft their warrant.

I am, moreover, bound by proceedings to enforce a foreign judgement. I cannot take the liberty of having a political will before examining the legal conditions.

It is not true that the Minister for Justice persisted, as you claim in finding legal conditions. It is to the Government's honour that it caused the law to triumph, regardless of how other considerations may be assessed.

Mr. Coveliers (speaking in Dutch). Extradition is an exception to the rule and should remain so. In 1984 Minister Gol extradited some Basques who had been arrested here, as dangerous criminals. As Spain, however, had to release them within a week, extradition proved to be in vain. It should not be denied that extradition is definitely the result of a political decision. It would also be wrong to state the Belgium had not cooperated with the English. However, the concept of "conspiracy" is much wider in Great Britain than here. As long as there is no European criminal law, it is not for us to rule as to its value, but in addition to British law, there is also Irish law, to which Mr. Ryan wished to submit voluntarily.

Mr. de Rijcke (speaking in Dutch). The Statement by the Minister for Justice was exemplary. Mr. Gol is mixing up political and legal arguments. This is surprising for a former Minister for Justice who once took a disputed decision on the extradition of two Basques. It is also astonishing that he considers that the Court Chamber should be able to express an opinion to the Government that would infringe the rule on the separation of powers.

The Chairman The matter is closed.
The public meeting of the Committee adjourned at 2 p.m.