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## III. Recent French Extradition Cases

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### III. Recent French Extradition Cases

This section of the appendix contains the first published collection of recent French extradition cases dealing with the application of the political offense exception to terrorists. Because of the selective fashion in which French decisional law is reported, many French extradition cases are never reproduced in any French case reporter. The purpose of this appendix is to provide an English speaking audience with the substance of opinions which are otherwise nearly impossible to obtain. The editors hope that this collection will aid comparative research and contribute to an informed debate on the political offense exception.

All of the cases reproduced below are from the various courts of appeal, as the French extradition statute excludes Supreme Court review in extradition cases (although the *Conseil D'Etat* may occasionally act, generally *post facto*). The lack of any unifying influence has resulted in an uneven and inconsistent doctrinal development. The cases below are organized according to the national origin of the extradition request, to emphasize the contradictions of the evolving doctrine. An analysis of these cases appears in Carbonneau, *The Political Offense Exception as Applied in French Extradition Cases Dealing with the Extradition of Terrorists*, this volume.

Two notable cases have not been included because they are available elsewhere. A report of the *Abu Daoud* case appears in 11 *Journal of International Law & Economics* 534 (1979) and in 4 *Terrorism: An International Journal* (1980); a report of the *Holder* decision appears in E. McDowell, *Digest of United States Practice in International Law* 168 (1975). Several other recent cases—including *Linaza* and *Affatigato*—could not be translated in time to be published.

The method of translation combines literal and free translation; it attempts to facilitate the reading of the opinions without sacrificing the essential meaning of the original text. The passages of the opinions relating to the application of the political offense exception have been translated with special care. Additionally, the facts and procedural history in certain cases have been translated in some detail to give the reader a sense of the full contours of an opinion. These selected cases serve to supplement the

translation of other cases in which only the essential elements of the opinions have been translated.

Professor Thomas E. Carbonneau of Tulane Law School translated these opinions. He acknowledges the assistance of Jean-Jacques Chriqui, Ms. Patricia Head, Ms. Valérie Naud, and Ms. Isabelle Roux, in the preparation of these translations. The opinions were obtained through the kind assistance of Mr. Herne of the French Ministry of Justice in Paris. The originals of these opinions—and others mentioned in Carbonneau, *supra*—are on file with the *Michigan Yearbook of International Legal Studies*.

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*In re MacCann*

December 13, 1978

Court of Appeal of Aix-en-Provence  
*Chambre d'Accusation*

After public hearings on December 6, 1978, the Court of Appeal of Aix-en-Provence, . . . *Chambre d'Accusation*, pronouncing judgment in open court, according to the provisions of the law of March 10, 1927, has rendered the following judgment.

[ . . . . ]

The Government of the German Federal Republic requested the extradition of James (alias Jimmy) Joseph MacCann, an Irish national, born on March 25, 1939 in Drogheda (Ireland), having no fixed domicile, presently held in the jail of the Baumettes in Marseille. Two arrest warrants were issued . . . [against the accused by a German court] for attempted murder and an attack using harmful materials.

[ . . . . ]

[T]he comparative study of the fingerprints . . . unequivocally shows that the person brought before the *Chambre d'Accusation*, arrested in Cannes on August 9, 1978, and calling himself Peter Kennedy, is the same person as one whose fingerprints were taken on February 3, 1962 in London at the police station . . . of an individual at that time identified as "Maccann, James Joseph born on March 25, 1939 or 1942 in Belfast or in Drogheda" and the same person as the one whose fingerprints were taken in Puy-en-Velay, on August 21, 1965 on a person identified at that time as "James Joseph Maccann born on March 25, 1939 in Belfast."

The description of the person cited in the arrest warrant of August 14, 1978, however, does not correspond exactly to the description of the interested party. In addition, if, as Peter Robert Elia, charged as being an accomplice, has declared . . . the perpetrator of the explosion is named Jimmy Maccann, the documents produced do not contain any indication permitting the conclusion that this Jimmy Maccann is actually the one . . . cited in the arrest warrants.

. . . [B]e that as it may, the documents and especially Elia's statements reveal that Maccann, perpetrator of the explosions, belongs to the I.R.A. and that he acted in the interest of the "Irish cause." Although it has now been pointed out that the two explosions did not occur in a public place, the first arrest warrant . . . stated that they took place in the British sector.

Accordingly, however deplorable they may be, these explosions, which moreover caused only material damages due to the hour at which they were activated, appear to have been prepared and carried out within the framework of the political struggle between the opponents of Northern Ireland against British authority. It follows that, according to the circum-

stances in which they were perpetrated, the infractions referred to in the extradition request have to be considered as political offenses.

For these reasons, given article 4 of the Franco-German Extradition Agreement of November 25, 1959, the court renders an unfavorable opinion to the extradition. . . .

*In re Winter*

December 20, 1978

Court of Appeal of Paris  
*Chambre d'Accusation*

The *Chambre d'Accusation* of the court of appeal of Paris (first section) rendered a judgment in open court regarding the request for the extradition . . . of Gabor Winter, a German national. The request was made by the Government of the German Federal Republic. . . .

[ . . . . ]

Gabor Winter, born on March 22, 1958 in Frankfurt-sur-Main, an offset printer operator and a German National, is the subject of an extradition request brought by the Government of the German Federal Republic. [The request is based upon] . . . an arrest warrant issued on September 14, 1978 . . . by the First Criminal Chamber of the District Court of Nuremberg-Furth on charges relating to the "constitution of a criminal organization and the commission by the members of this organization of aggravated robbery." [The charges are defined by] . . . articles 129(1), 242, 25(2), 52(1) of the German Code of Criminal Procedure.

The warrant of September 14, 1978 . . . clarifies and supplements a previous warrant issued on September 3, 1976 against Gabor Winter by the examining Judge of the Court of Munich . . . which also was included in the legal documents transmitted through diplomatic channels to the requested State. These documents establish, first of all, that Gabor Winter is suspected of having committed a number of offenses.

According to the arrest warrant, the accused, Gabor Winter, is charged with: having created, . . . [along with other prisoners], an organization called the "Black Assistance of Nuremberg" which claimed to be the "Council of the Prisoners of Nuremberg" . . . ; giving this organization the aim of "inciting revolution among the prisoners by providing them with material and ideological support to achieve the abolition of existing social conditions, struggling against the State following the example of the "Red Army Faction" (using urban guerrilla tactics, fostering revolution, eliminating the established order in the German Federal Republic through acts of violence, and [generally] dismantling "the system")"; . . . [According to the court's description, the warrant also lists a number of other offenses

relating to the general activities just described, namely, the publication of materials relating to urban guerilla tactics and other terrorist methods. Winter also had a set of notes which described "clandestine equipment" (bombs, machine guns, etc.) which was to be used in terrorist strikes. According to the charges in the warrant, the accused had documentation regarding a veritable arsenal of weapons; the documentation revealed that these weapons and other materials were to be used in terrorist strikes, similar to those perpetrated by the Red Army Faction, the purpose of which was to topple the established order in West Germany. Supplies and equipment were to be acquired through the commission of robberies. One document described the purpose of the anticipated robberies in these terms: "we know what murder is; today, if we have made a hole in your safes, tomorrow there will be several holes in your pig-like heads and in your kidneys full of fat . . . [A]gainst the murders by the leadership, we can only defend ourselves by killing leaders." When Winter and his cohorts were arrested, munitions and explosives were found in their possession.]

[ . . . . ]

These are the facts as related by the . . . arrest warrant of September 14, 1978. The . . . [warrant] states that these activities satisfy the elements of the "crime . . . of organizing a criminal organization, coinciding perfectly with the crime . . . of aggravated robbery" as described by articles 125(1) 242, 25(2), 52(1) of the German Code of Criminal Procedure. This same warrant further states that, under articles 112(1)(2-1) of the Code of Criminal Procedure, the German authorities directed that Winter, the accused, be arrested and brought before the District Court of Nuremberg-Furth, or the nearest district court. An order for his provisional arrest was issued since the accused avoided criminal prosecution by fleeing abroad.

The arrest warrant satisfies the requirements of article 8 of the Franco-German Agreement. [The charges listed in the warrant] . . . are provided for in the substance of the German Law of September 10, 1972 concerning weapons . . . [and the relevant provisions] of the German Code of Criminal Procedure. . . .

[ . . . . ]

In addition, the German Authorities also have transmitted through diplomatic channels the previous arrest warrant issued against Winter on September 3, 1976. . . . That warrant contains the following description of Winter's activities:

The accused, Piroch and Winter, at least by the beginning of July 1976, acting in concert with . . . others, resolved to eliminate the existing social order in the German Federal Republic through violence and recourse to urban guerilla warfare. The accused and the other members of the group resolved to perpe-

trate, as a small autonomous group, offenses in the district of Nuremberg. They took steps to prepare for the making and use of [various explosive devices]. . . . In order to acquire the necessary financial means, the members of the group anticipated committing thefts and bank robberies. During the commission of these crimes, the group anticipated using Molotov cocktails. . . . [T]he members of the group intend to struggle against the existing social order the same way as the . . . Red Army Faction; that is, through incidents involving the use of explosives, by bank robberies, and by freeing prisoners through violence.

[ . . . . ]

The arrest warrant of September 3, 1976 also states . . . that Gabor Winter is charged with "the organizing of criminal groups." These activities give rise to sanctions under article 129(1) of the German Code. Serious presumptions [of guilt] arise from the confessions of the defendants made in conjunction with the police investigations. . . . There exists against Winter a charge provided for by article 112(2) of the Law of Criminal Procedure because there is a danger of escape and destruction of evidence. Since his organization functions clandestinely, the subsequent investigations regarding its size and identity might be more difficult.

[ . . . . ]

[In analyzing and responding to defense arguments, the court holds that there is no contradiction between the substance of the two arrest warrants that have been issued by the German authorities against Winter and that there is no problem regarding the legal characterizations given to the charges by the German authorities. On this last point, the court adds in traditional fashion that it is powerless to look behind the legal characterizations attributed by the requesting State to the conduct of the accused; the court's role consists only in ascertaining whether the extradition documents and process satisfy the requirements established by the applicable convention. Finally, the court addresses the allegation that the extradition request violates the principle of double criminality. Here, the court again rejects the arguments of the defense counsel, ruling that the charge of organizing a criminal group indeed is sanctioned by both French and German criminal law by prison terms greater than the required one year minimum. The court concludes that the request meets the requirements of the applicable convention on all of these issues.]

[ . . . . ]

The defense . . . requests that the court render an unfavorable opinion on the extradition based upon the substance of article 4 of the Franco-German Agreement, providing that:

Extradition will not be granted if the infraction which gives rise to the extradition request is considered by the requested party, according to the

circumstances in which the act was committed, as a political infraction, or an act committed to further such an infraction, to execute it, to assure its effects, to procure its impunity, or as an act committed to prevent the accomplishment of a political infraction.

If the court looks only to the the letter of the arrest warrant transmitted by the German authorities—the contents of which the court cannot review, Winter and his accomplices intended to commit a number of crimes against people and property “in order to achieve the abolition of existing social conditions.” The warrant further states that the accused established as the aim of their organization to struggle against the State according to the example set by the Red Army Faction—using urban guerrilla tactics, promoting revolution and the destruction of the system and the established order in the German Federal Republic through violence.

The court deems that: the serious crimes which the members of the group, including Winter, intended to commit (namely, crimes against people and property) constitute offenses which, by their object, are not political but common law offenses. This conclusion follows not only from the kind of materials (weapons, explosives, etc.) . . . the possession of which was considered necessary, but also from acts that were planned to procure this material. . . . [T]he intended purpose of the group . . . [described above] would not suffice, taking into account the seriousness of the projected crimes, to consider the latter as having a political character. In addition, a political character could not even be attributed to the purpose of the group since the movement in question did not have as its aim to challenge the political structure of the State, but rather the German Nation as a social group. This fact is indisputable. According to the warrant, the group in question declared that its purpose was “the abolition of the existing social conditions.” Social crime, born at the end of the nineteenth century, is distinguished in criminal law from [the concept of] political offense both by the courts and legal scholars. [Social crime] is considered as an ordinary offense; it is distinguished by the fact that it seeks to upset the social structure independently of the political organization of the State. Its external manifestation cannot be distinguished from . . . the ordinary criminal act. Both of them have the same disregard and contempt for the life of innocent victims (who are strangers to political events) as well as for the property of others.

Accordingly, it follows that the court must reject the defense arguments on this point. The facts characterized as organizing a criminal group, as described in the transmitted documents, do not have, in the court’s opinion, a political character. . . .

The defense also advances [the argument] that [the extradition request should be denied] on account of the “political aim” which underlies the



German request in violation of the provisions of article 5(2) of the French Law of March 10, 1927. Despite the silence of the Convention on this matter, [the defense contends that] the court must examine this question. [To support its position,] the defense refers to a judgment rendered in the Astudillo case by the *Conseil d'Etat*.

. . . Article 1 of the Law of March 10, 1927 provides that the domestic statute applies only to matters which are not covered by treaty provisions. In the Astudillo case, the Franco-Spanish Agreement, which [also] was silent regarding the motives underlying the extradition request, was ratified prior to the enactment of the 1927 statute. Therefore, it was possible to rule that article 5(2) of the domestic law had effectively supplemented the provision of the extradition agreement on this point. In the instant case, the situation to which the Franco-German Agreement for Extradition of November 29, 1951 gives rise is completely different.

In effect, article 1 of this latter Convention, ratified after the enactment of the 1927 law, contains an imperative rule as to the intended aim of the requesting State, which is not subject to discretionary court interpretation. Article 1 provides that the contracting parties "mutually agree, according to the rule and under the conditions provided in the following article, to hand over to each other the individuals sought by the . . . [judicial authorities of the requesting State]." [The Convention provisions] . . . have a higher legal authority than prior laws and necessarily prevail over the conflicting provisions of these laws. . . . Articles 4 to 7 of the Franco-German Agreement set out meticulously the circumstances in which extradition can be refused; these articles, however, do not mention the political aims of the requesting State (*See Conseil d'Etat* case, July 7, 1978).

Consequently, the argument so presented to the court must be rejected. Winter cannot avail himself of the provisions of article 5(2) of the Law of March 10, 1927 to maintain before the present *Chambre d'Accusation* that the court must examine the would-be political aim of the German request.

Finally, the defense pleadings . . . indicate that Gabor Winter made a request . . . for political asylum in France to the proper administrative authorities. . . . This factor does not create an obstacle to the court's rendering an opinion on the extradition request . . . . Indeed, even assuming that the accused can acquire the status of a refugee, article 33 of Geneva Convention of July 28, 1951, as modified by the Protocol of January 31, 1967, does not prohibit extradition, but only deportation or expulsion—measures [which are] legally different [from extradition]. Thus, this argument is not conclusive and must also be rejected.

[ . . . . ]

For these reasons, the court is of the opinion that a favorable opinion has to be rendered regarding the request for extradition brought by the Government of the German Federal Republic against Gabor Winter.

*In re Croissant*

November 16, 1977

Court of Appeal of Paris

*Chambre d'Accusation*

[ . . . . ]

Mr. Klaus Croissant, attorney at law, . . . presently held in the jail of "La Santé " . . . is the subject of an extradition request brought by the Government of the German Federal Republic. . . . The request is based upon . . . an arrest warrant issued on July 15, 1977 by the District Court of Stuttgart containing the following charge: participation in a criminal group, an offense defined and sanctioned by article 129 of the German Penal Code. . . .

[ . . . . ]

Mr. Croissant was, among other attorneys-at-law, the counsel of persons implicated [in a number of criminal incidents of a terrorist nature]. From his legal representation of the members of the Baader-Meinhoff group, Croissant became the subject of a number of proceedings which need to be described briefly. According to an arrest warrant issued on June 23, 1975 by the Cantonal Tribunal of Stuttgart, . . . he is strongly suspected of having: in violation of the provisions of article 129 of the German Code of Criminal Law, in Stuttgart and other places in close collaboration with [other attorneys] . . . supported and encouraged an organization [known as the Baader-Meinhoff group], having as its aim to prepare or commit crimes, by providing, at least since 1973, written documents and publications of the Baader Meinhoff group to members of the same group detained in other jails, [thus] helping [the group] to continue to exist and, although a large number of its members were incarcerated, to commit offenses, from the jail, against the authority of the State. By following the orders of Baader, the leader of the group, in October and November 1974, [the accused] encouraged prisoners, jailed in other prisons, to resume and continue a hunger strike to which the group gave primary importance. Following the orders of leading members of the group, [the accused] organized meetings . . . and other activities in Germany as well as abroad with the aim to awaken public interest in the members of this criminal organization and its so-called political aims.

[ . . . . ]

Other documents establish that Croissant is seriously suspected of having . . . admonished Bernard Braun, a member of the organization who ended his hunger strike, restraining information which was aimed at him, [and] soliciting in this matter, the agreement of Baader. . . . [The documents also establish that] during a meeting in Karlsruhe on November 8, 1976, [Croissant] accused the authorities of pursuing a policy of torture by

isolation . . . against the prisoners of the Red Army Faction and incited the prisoners to promote their grievances by a hunger strike. . . . [D]uring December 1974 or January 1975, Croissant contravened the censorship of the Judge, and organized the publication, through the German newspaper *Spiegel*, of an interview of Baader and other prisoners.

[ . . . . ]

The warrant [issued on July 19, 1977], which contains the declarations of the defendant, the statement of thirteen witnesses designated by name and documents seized, summarizes and amplifies the main idea. Croissant has, since 1972 and at least until the beginning of 1976 at Stuttgart and elsewhere, partly in the company . . . [of other attorneys], using his capacity as the legal counsel of Baader, Meinhoff, Ensslin, [and] Rasse . . . , promoted a criminal organization already referred to in the instant case, and known under the name of R.A.F., and contributed to the maintenance and exercise of its activities as well as the accomplishment of its goals.

It is also alleged that Croissant: before their arrest in June, 1972, furnished to the group's leaders information obtained in May, 1972 from people having breached the professional secrecy to which they were bound and related to anticipated police searches; after their arrest, in his capacity as attorney-at-law and misusing the privilege attached to the relation between prisoners and attorneys, made possible an exchange of communications with a view to pursuing the terrorists' action between the said prisoners and others organizing and participating in a network of communications related to documents written by prisoners for the sake of their friends, referring to, among other things, guerilla tactics and the manufacture of explosive devises; in his capacity as attorney-at-law, organized hunger and thirst strikes, saw to it that they were followed and respected, and sanctioned those who refused to comply by excluding them from the information network, thus assuming responsibility for discipline within the group; devoted himself to an intensive activity of propaganda in favor of the group, especially by organizing public meetings, giving conferences and transmitting, in contempt of the court's prohibition, to the German newspaper *Spiegel* an interview of the prisoner Baader, [and] . . . transmitting written notes from some prisoners to other prisoners and sympathizers. It is specified that all these activities affected only partially the defense [of these prisoners] and was most of all aimed at stimulating public interest in the alleged political aim of the group, recruiting members or sympathizers and hiding the real aim of their acts which lead to the perpetration of punishable acts.

These facts are considered elements of the offense of continuous support (in part jointly with others) of a criminal organization as defined and sanctioned by article 129(1)(4) and article 25(2) of the German Code of Criminal Law, providing for a prison term of six months to five years.

[ . . . . ]

[Here, the court discusses in characteristic fashion its authority under the relevant law in the process of extradition (e.g., the type of scrutiny it can give to the extradition documents), whether the offenses are part of the enumeration in the Franco-German Extradition Agreement, and whether the offenses also are punishable under French law. The principal charge which the court considers relates to Croissant's aiding and abetting of a criminal organization in his capacity as a legal counsel.]

Article 5 of the Law of March 10, 1927 prohibits extradition when the crime or the offense which is charged has a political character or when the circumstances reveal that the extradition request was made for a political end. Article 4 of the Franco-German Agreement of November 29, 1951 provides that extradition will not be granted if the infraction giving rise to the request for extradition is considered by the requested party, in light of the circumstances in which the offense has been committed, as a political infraction or an act committed to prepare such an infraction, to execute it, to assure its effects, to procure its impunity, or as an act committed to prevent the accomplishment of a political infraction. . . . The political character of the offense does not act as a legal defense to extradition when the act consists of attempted murder which is not committed during open civil strife.

The substance of this text differs appreciably from that of the Law of 1927. [The differences relate to] the specifications given by the Convention to the method of characterizing an act in relation to circumstances preceding and following the commission of the act, the inclusion of conduct pursued with a view to opposing a political infraction. [These factors] lead to the conclusion that the Convention is sufficient on its own; consequently—notwithstanding some decisional law—the Convention can be applied to Franco-German relations. The Convention expresses the common intent of the [contracting] parties on the issue of the political character of crimes; a contrary ruling would go beyond what has been agreed upon by bringing into play the provisions of a domestic statute. There is, therefore, no reason to consider whether the extradition request was made with and motivated by a political purpose.

Croissant challenges the reprehensible character ascribed to all the charges brought against him. He further contends that the issue of the political purpose underlying the extradition request is largely irrelevant in light of the fact that . . . he is not accused of any effective and direct participation in the criminal acts attributed to the members of the R.A.F., and no similar charge is brought against him. Moreover, he maintains, in any event, that his case differs from those which have been referred to as comprising a particular position in the decisional law. [Unlike these other cases, Croissant is] . . . suspected of having supported a criminal organiza-

tion. The request for his extradition could be considered political only if the acts imputed to this organization were political or could be attributed to a political motivation.

The warrant of July 15, 1977 contains a list of the charges brought against . . . [the members of the criminal organization and includes a variety of murder and attempted murder charges]. . . . These acts are not political by their nature; they consist . . . of criminal activities which . . . do not present any common character which allows them to be integrated into an organized system of opposition against something or in favor of something else. Rather, they reflect a scorn for the life of innocent victims who were not related to the political factors, and for the property of others.

The reference to the documents contained in the judgment . . . of April 28, 1977 sentencing . . . [members of the criminal organization] to life imprisonment summarize the orders given to the R.A.F. by Baader, its undisputed leader. These orders can be described as follows. Before June 1972, [Baader ordered his group] to kill American citizens because of the bombing of North Vietnam, to kill civilians in so far as they represent "the police and justice," [or] "agents of the hated State," to kill workers. . . . After June 1972, the orders regarding activities [of the group] inside the prison . . . [were concerned with] maintaining the solidarity of the imprisoned members of the organization [who were held] in different jails; the hierarchy of the people under Baader's authority; the utility and efficacy of such measures as the hunger strike undertaken to portray prison conditions as contrary to human rights and to establish the cohesion of the prisoners; and, finally, the future orientation and activities of the organization. Orders regarding activities outside the prisons addressed: the necessity of generalizing and perfecting guerrilla methods, of promoting an international image, of pursuing acts of violence with the aim of inciting terror, and of reinforcing in public opinion the image of the organization's power in order to better its position when it was engaged in operations for obtaining money or the freedom of prisoners in exchange for hostages.

. . . [I]t is unnecessary to draw a formal conclusion from the foregoing since the facts referred to and the conclusions to be drawn from them allow [the court] to conclude unequivocally that, even assuming that the charges brought against the Baader gang (and they consist essentially of violent and bloody crimes) reveal a certain political motivation, this factor would not, on its own, create an obstacle to Croissant's extradition, according to the provisions of the last paragraph of Article 2 of the Franco-German Convention. . . .

In conclusion, [the court renders] a partially favorable opinion . . . to the request for extradition of Klaus Croissant.

*In re Barabass*

July 9, 1980

Court of Appeal of Paris  
*Chambre d'Accusation*

This judgment was rendered in open court on July 9, 1980, giving an opinion on the request for the extradition of Ingrid Barabass, born on April 14, 1952 in . . . the German Federal Republic, of German nationality.

[ . . . . ]

All necessary procedures prescribed in articles 9, 10, 11, 12, 13 and 14 of the Law of March 10, 1927 regarding the extradition of foreigners have been satisfied. The procedure, therefore, is correct as concerns formalities.

By oral report of May 16, 1980, the Government of the German Federal Republic requested through diplomatic channels the extradition of Ingrid Barabass . . . on the basis of an arrest warrant issued on November 7, 1978 by Mr. Kuhn, the examining magistrate of the Federal Supreme Court of Justice in Karlsruhe. The warrant contained the following charges. First, [the accused is charged with] participating since at least May, 1977 in . . . the German Federal Republic, and also in Vienna (Austria), in an organization, the aim and activity of which is to be achieved through homicide (articles 211 and 212 of the Code of Criminal Law), through offenses against personal freedom (articles 239(a) and 239(b) of the Code of Criminal Law), and through offenses against the community (article 311(1) of the Code of Criminal Law). Second, [the accused is charged with] having on November 9, 1977 in Vienna (Austria), while acting concurrently with others, kidnapped a person to take advantage of a third party's anxiety with a view to committing extortion (article 253 of the Code of Criminal Procedure).

[ . . . . ]

By a letter entitled "findings of plea of forgery" (*conclusions de faux incident*) and filed in court the same day as the hearing on June 25, 1980, defense counsel for Ingrid Barabass referred to a declaration of a plea of forgery (*acte d'inscription de faux incident*) filed by them at the clerk's office.

This plea related to: first, the report of Ingrid Barabass' interrogation by the Deputy Director of Public Prosecution, on May 14, 1980; second, the public prosecutor's motion to refer the matter to the *Chambre d'Accusation*. [On the basis of this plea,] counsel urged that, on the one hand, consideration of the request for extradition be deferred and that, on the other hand, the report and the public prosecutor's motion be declared null and void. Consequently, the subsequent procedure had to be declared void as well.

First of all, the court recognizes that the plea of forgery (*acte d'inscription de faux*) bears the following annotation made by the clerk of court's office: "memorandum received by the clerk of court's office on June 25, 1980 at

2:30 p.m." with the clerk's signature and the seal of the court. This document, inasmuch as it can be applied to the procedure of extradition, having been filed at the clerk of court's office the same day as the hearing on June 25, 1980, accordingly cannot be considered, from this point of view, as a "memorandum" regularly filed within the time prescribed by article 198 of the Rules of Criminal Procedure.

The court also notes that, in the document entitled "conclusions of plea of forgery" (*conclusions d'inscription de faux*) filed with the court the same day as the hearing, there is a reference . . . to the date of June 24 as being the one of filing the declaration of plea of forgery (*acte d'inscription de faux incident*) with the clerk's office, although the document had not effectively been filed before June 25, 1980. The court, however, determines that this is not a material error of the authors of the document entitled "conclusions."

In regard to the report of Ingrid Barabass' interrogation established by the Deputy Director of Public Prosecution on May 14, 1980, it follows from the reading of that document that, if the printed words "I am named . . ." and "born on . . . in . . ." have not been crossed out because of a material omission . . ., the Deputy Director of Public Prosecution has . . . taken notice that Ingrid Barabass refused to answer the question of knowing whether the request for extradition was applicable to her. This report of May 14, 1980 thus exactly reproduces the interested party's reactions to the questions she was asked.

In regard to the public prosecutor's motion on May 14, 1980 by which the *Chambre d'Accusation* was asked to interrogate the interested party and to decide what is proper, the court points out that this . . . motion complies with all the necessary formalities—that is to say, it refers to the request for temporary arrest issued by the German Government and it contains both the Deputy Director of Public Prosecution's signature and the date.

The mere fact that this motion, which was made on a printed form, maintains—because of a material error—the references regarding the fact that, on May 14, the interested party had admitted that the request for temporary arrest was applicable as to her identity, does not affect the validity of the public prosecutor's motion when—after all—it does not make any difference for the purpose of referring a request for extradition to the court that the interested person recognized or did not recognize that the documents were applicable to her as concerns her identity or have refused to answer. . . . Article 14 of the Law of March 10, 1927 only requires that the reports and other documents be immediately referred to the *Chambre d'Accusation*.

In the instant case, the matter was validly referred to the *Chambre d'Accusation* by the public prosecutor's motion of May 14, 1980 and signed by the Deputy Director of Public Prosecution. Moreover, notwithstanding Ingrid

Barabass's persistent refusals to answer questions regarding her identity, this identity is not and has not been contested.

The report of Ingrid Barabass' interrogation on May 14, 1980 and the public prosecutor's motion made on the same date cannot by any means be considered void nor can the subsequent proceedings. The briefs filed by the defense, on these different grounds, can consequently only be rejected. There is no reason to defer consideration of the extradition request regarding Ingrid Barabass.

It should be noted that, in matters of extradition, it is not within the authority of the *Chambre d'Accusation*—except in the case of evident error, which does not exist here—to discuss the merits of the presumptions upon which the grounds for complaint of the requesting State are based. . . . The court is unable to contest what the requesting State asserts regarding the reality, existence, or merits of the charges which are brought. The *Chambre d'Accusation* is required to determine if the conditions necessary for extradition set forth by the Franco-German Agreement of November 29, 1951 are satisfied, particularly regarding minimum lawful sentence, double criminality, and the absence or presence of the political character of the offenses enumerated in the request for extradition.

The Documents transferred through diplomatic channels describe the following facts. During the summer of 1971 an armed clandestine organization was created in Berlin—Ralf Reinders, Inge Vielt, and Fritz Teufel successively joined the organization. The members of this group first called themselves the "Blues," and from February 1972 . . . were known by the name of "Movement of June 2d." After several arrests, this group, by 1973, was comprised of no more than the three above-mentioned members. By the beginning of 1974, the membership of the group had increased. . . .

The aim of the group was and remains the transformation of the social order in the German Federal Republic and West Berlin through violence. By committing specific acts of violence, [the organization intends that] the established order will be overthrown and afterwards the population will be [re-]unified. The financing of the group . . . is accomplished by means of criminal acts.

Pursuant to this objective, the members of "the Movement of June 2d" probably: . . . [burglarized in 1974-75 a number of banks and a weapons factory as well as] . . . ; on November 10, 1974, murdered by gunfire the president of the Court of Appeal of Berlin, Mr. Gurter Von Drenkmann, in his apartment, after having attempted to kidnap him; on February 27, 1975, kidnapped Peter Lorenz, political figure of the "Christian Democratic Union." He was not freed until the night of the 4th and 5th of March after the kidnappers had obtained—under threat of killing their captive—the discharge of five convicted perpetrators of acts of violence and of two others accused of such crimes.



[ . . . . ]

[A number of the members of the group are currently being prosecuted in Germany for felonies and misdemeanors.] . . .

[ . . . . ]

On November 9, 1977, . . . the industrialist Walter Palmers was taken by force and under intimidation into a Peugeot 504 by three persons, and was kidnapped. After about a five-minute ride, Palmers was transferred to another vehicle, and got into a VW "bus."

Shortly before the end of the ride, the kidnappers rolled their captive up in a foam rubber rug . . . and . . . carried him to a room of a ground-floor apartment where he was guarded by a man and a woman wearing face masks. After the kidnapping, the kidnappers, by phone and letter, required from the Palmers family a ransom of 50,000,000 Austrian schillings, under the threat of killing their captive.

On the night of November 13, 1977, subsequent to a payment of 31,000,000 Austrian schillings by his son, Palmers, after a four-day captivity, was escorted by three persons [to a location] near the Hotel Arabella and freed.

According to the investigative reports, the kidnapping and the extortion were carried out by the "Movement of June 2d."

According to the credible statements of . . . [several witnesses who were implicated in other incidents] and in light of . . . the evidence discovered in the apartment [where] . . . the kidnapping took place, plus statements by other witnesses, and given the fact that ransom money . . . was found on the persons of members of the group who were subsequently arrested, the following persons are under a very strong suspicion of having committed the kidnapping and extortion: . . . [the court lists the names of a group of individuals who are members of the group; this list includes the name of the accused.]

The diplomatic documents state that substantial evidence resulting from the following facts implicates Ingrid Barabass. Barabass has been a member of the terrorist organization "Movement of June 2d" since at least 1977.

The apartments . . . in Vienna served as a base for the kidnapping and holding of the industrialist Palmers. In [one of] the . . . apartments, the fingerprints of . . . , Ingrid Barabass were found. According to the statements of [one witness] . . . , only those persons living in hiding and having been involved in Palmers' kidnapping had access to the apartments.

The arrest warrant of November 7, 1978 states that the charges against Ingrid Barabass are defined and sanctioned by article 129(a)(1) of the German Code of Criminal Law which prohibits . . . [criminal] organizations and provides for prison terms of six months to five years; and by article 239(a)(1) of the aforementioned Code which punishes the kidnapping of

human beings for extortion and provides a penalty of at least three years imprisonment.

Thus, Ingrid Barabass is sought for felonies and misdemeanors which, according to the German Code of Criminal Law, satisfy the conditions contained in article 3 of the Franco-German Agreement of November 29, 1951. [The latter provision states that extraditable offenses consist of] . . . felonies and misdemeanors sanctioned by a penalty of at least one year of imprisonment.

These are the elements contained in the documents transmitted through diplomatic channels to support the request for extradition formulated by the authorities of the German Federal Republic on the basis of the arrest warrant of November 7, 1978 against Ingrid Barabass.

The elements furnished by the requesting authorities and described above establish, on the one hand, the existence of a type of activity characteristic of a criminal organization according to article 265 of the French Code of Criminal Law. This provision provides that the organization of any group or the making of any agreement "to prepare or commit felonies against persons or property constitutes a crime against the peace."

Article 266(1) of the same code punishes, with a ten to twenty year imprisonment, anyone who has been associated with such an organization or who has been a party to an agreement the aim of which is described by article 265.

Those provisions of the French Code of Criminal Law correspond to the elements furnished by the requesting authorities in the first item of the arrest warrant against Ingrid Barabass. They also comply with the conditions provided for in article 3 of the Franco-German Agreement regarding the minimum sentences (at least one year of imprisonment).

The facts alleged by the requesting authorities in the second charge of the arrest warrant correspond in French law to the crime defined by articles 341 and 343 of the Code of Criminal Procedure. The latter provides for life imprisonment if the victim . . . was kept or sequestered in a secret place as a hostage to insure the execution of an order or condition. Therefore, these penalties also satisfy the requirements of article 3 of the Agreement.

Article 4 of the Franco-German Agreement specifically provides that extradition will not be granted if the infraction giving rise to the request for extradition is considered by the requested party, according to the circumstances in which it was committed, as a political infraction, or as an act committed to further such an infraction, to execute it, to assure its effect, to procure its impunity, or as an act committed to prevent the accomplishment of a political infraction.

The infractions described in detail in the arrest warrant and regarding the activities of the "Movement of June 2d," that is to say, felonies against persons and property, are crimes which, by their object, are not political

but ordinary crimes. The fact that these acts were allegedly committed, according to the arrest warrant, with the intention of overthrowing and transforming by violence the established order in the German Federal Republic is not sufficient, in light of their gravity, to have them considered as having a political character.

Moreover, it is significant, in this respect, to note that the requesting authority defines the aim of the organization as being to destroy the basic order without any other characterization.

Consequently, the crimes Ingrid Barabass has been charged with in the arrest warrant of November 8, 1978, that is to say, first, her membership in such an organization (which is reflected moreover by her participation in one of the crimes) cannot thus be considered, according to the circumstances in which they were committed, as a political crime according to the meaning of article 4 of the Agreement. For the same reasons, according to the meaning of the same article, neither can the kidnapping of Walter Palmers with a view to extortion, alleged against Ingrid Barabass in the same arrest warrant, be considered as a political infraction.

Article 1 of the Franco-German Extradition Agreement of November 29, 1951 provides that the contracting parties "mutually agree, according to the rules and under the conditions provided in the following articles, to hand over to each other the individuals sought by the . . . [judicial authorities of the requesting State]." The request for extradition thus is not subordinated to any condition other than those provided for in this Agreement. The provisions of article 1 of the Law of March 10, 1927 should not supersede those of the Agreement, which are more recent and have a higher authority.

If articles 4 through 7 of the Franco-German Agreement describe the circumstances in which the extradition could or should be refused, those articles do not mention the [possible] political motive of the requesting State [for making the request].

[ . . . . ]

In conclusion, a favorable opinion must be given to the request for extradition brought by the Government of the German Federal Republic against Ingrid Barabass.

For these reasons the court is of the opinion that the request for extradition brought by the Government of the German Federal Republic against one Ingrid Barabass should be favorably received.

*In re Hofmann*

July 9, 1980

Court of Appeal of Paris  
*Chambre d'Accusation*

This opinion was rendered in open court on July 9, 1980 on the [West German Government's] request for the extradition of Sieglinde Hofmann, born on March 14, 1945 in Koenigshofen (German Federal Republic) and of German nationality.

[ . . . . ]

On May 16, 1980, the Government of the German Federal Republic made a request for the extradition of one Sieglinde Hofmann.

On May 6, 1980, the prosecuting attorney in Paris interrogated the interested person as to her identity; minutes of the interrogation were taken, and he committed her to prison while awaiting possible extradition.

At the hearing before the *Chambre d'Accusation* on June 4, 1980, notice was given of the grounds upon which the arrest took place and documents were produced to support the request for extradition.

[ . . . . ]

All necessary procedures prescribed by articles 9, 10, 11, 12, 13, and 14 of the Law of March 10, 1927 regarding the extradition of foreigners have been complied with; the procedure in regard to formalities, therefore, is correct.

By oral request of May 16, 1980, the Government of the German Federal Republic requested, through diplomatic channels, the extradition of Sieglinde Hofmann . . . on the basis of an arrest warrant issued on March 7, 1979 by Mr. Kuhn, the examining magistrate of the Federal Supreme Court of Justice in Karlsruhe, on the following charges. First, it is alleged that the accused has participated since the summer of 1976 in Frankfurt and in other places in the German Federal Republic and in foreign countries as a member of an organization the aims of which are to be achieved through homicide (articles 211-212 of the Code of Criminal Law), through offenses against personal freedom (articles 239(a) and 239(b) of the Code of Criminal Law), and through offenses against the community (article 311(1) of the Code of Criminal Procedure). Second, Hofmann is accused of having, on July 30, 1977, in Oberur-Sel / Taunus while acting concurrently with others: (a) attempted to kidnap a person in order to commit extortion (article 253 of the Code of Criminal Procedure); (b) attempted to kidnap a person to force a third-party to commit an action under the threat of [harm to] the victim; (c) committed a homicide with criminal motive and to disguise another infraction.

These offenses are felonies and misdemeanors punished under articles 129(a), 211, 239(a), 239(b), 22, 23, 12, 25, 52, 3, 7 of the German Code of Criminal Law.

[The court first considered technical irregularities similar to those discussed in Barabass.]

In matters of extradition, it should be recalled that it is not within the authority of the *Chambre d'Accusation*—except in cases of evident error which

does not exist here—to discuss the merits of the evidence upon which the grounds for the request of the requesting State are based. The court is unable to review what the requesting State asserts regarding the reality, existence, or merits of the charges which are brought.

The *Chambre d'Accusation* is required to determine whether the conditions necessary for extradition required by the Franco-German Agreement are met; . . . [The court discusses briefly the history of and the personalities associated with the Baader-Meinhof gang and the Red Army Faction].

. . .

Today, several people belong to this group [the Baader-Meinhof group] (whose names are mentioned in the diplomatic documents) and Sieglinde Hofmann joined the association at the latest during the summer of 1976.

The aims of the group are the murder of political, economic and judicial representatives in the German Federal Republic, and the liberation of perpetrators of terrorist violence [who have committed] . . . kidnapping, bombings and burglaries. Pursuant to this objective, the members of the association have committed, among others, the following offenses: [The court at this point lists a number of crimes, including armed robbery of a government office, banks, and a gun shop; the murder of government officials and police officers; and, finally, the kidnapping and murder of Hans-Martin Schleyer]. . . .

The requirements of the Agreement of November 29, 1951 are satisfied—particularly regarding the minimum lawful sentence, double criminality and the absence or presence of the political character of the offenses enumerated in the request for extradition.

The documents transferred through diplomatic channels describe the following facts. . . . During the summer 1976, the former lawyer Siegfried Haap in concert with Roland Nayer created an armed association based on the model of the former group of Baader-Meinhof's directed by Andreas Baader and Gudrun Ensslin; its members were called the Red Army Faction. Even after the arrest of Haap and Nayer on November 30, 1976, this group pursued criminal activities. Haap and Nayer's influence was, however, being destroyed, bit by bit, following their arrest.

[ . . . . ]

The diplomatic documents point to serious evidence regarding Sieglinde Hofmann's adherence to the terrorist association "R.A.F." (Red Army Faction/*Faction de l'Armee Rouge*):

Sieglinde Hofmann was, in the past, a member of the Socialist and Collectivist Associations . . . (S.P.K.) which, in February 1970, had been created at the University of Heidelberg and pursued, as did the Baader Group, the aim of eliminating the fundamental order (Grundordnung) of the German Federal Republic through violence.

A large number of the S.P.K.'s members were, after the arrest of the

Huder couple during the summer of 1971, integrated into the Baader-Meinhof Group, that is, into the Red Army Faction. In mid-May 1975, Sieglinde Hofmann went underground with Siegfried Haap, leader of the Red Army Faction and was in close contact with him.

During an investigation conducted on May 9, 1975 at the Heidelberg office of Siegfried Haap (a former attorney-at-law), the passport, the university identity card, the postal savings bank book, among other things, of Sieglinde Hofmann were seized. At that time, Siegfried Haap, having abandoned his law career, went underground; during the summer of 1976, he, along with Roland Nayer, reorganized the terrorist organization Red Army Faction. Sieglinde Hofmann joined this organization.

After the arrest of Haap in November 1976, Brigitte Mohnhaupt undertook the role of leader of the Red Army Faction in the spring of 1977. According to two messages of the Red Army Faction, Sieglinde Hofmann had, from May to September 1977, participated . . . in at least eight meetings (organized with a conspiratorial purpose) of members of the Red Army Faction on national territory and abroad. As a general rule, she attended these meetings with the leader Brigitte Mohnhaupt and members of other groups. The purpose of these meetings frequently was the planning and the execution of violent acts, aiming at the release of detained members of the group.

On September 6, in Dusseldorf, . . . the police searched a Red Army Faction apartment. The apartment, rented on February 12, 1978 by a member of the group under a false name, was used for the purpose of conspiracy. The rent was, until September 1978, paid in cash to some financial institution in Dusseldorf.

[ . . . ]

[A number of weapons were seized at this apartment, including an instrument] manufactured by the group and consisting of thirty nose cone grenades similar to the one that the members of the group had used on August 25, 1977 during the . . . bombing of the Public Prosecutor's office. [A fingerprint of Sieglinde Hofmann was found in a book in the apartment]. . . .

When she was arrested in Yugoslavia on May 7 along with Brigitte Mohnhaupt and the [other] members of the group . . ., Sieglinde Hofmann had a number of different counterfeit identity cards . . ., in particular a passport from the principality of Liechtenstein, issued on November 13, 1969 at Vaduz in the name of Maria Risch and stolen on April 15/16, 1977.

. . .

With regard to the Jurgen Ponto case, the diplomatic documents state that, on July 30, 1977, around 5:20 PM, the latter was killed by gunfire in his apartment building . . . by two women and a man of the terrorist association Red Army Faction. The leader Brigitte Mohnhaupt as well as

. . . [other] members of the group . . . were seriously suspected of having committed this act. The perpetrators first of all, attempted to kidnap Jurgen Ponto. . . . The victim (Jurgen Ponto) was chairman of the board of directors of the Dresden Bank and a business leader. [This status] permits the conclusion that the authors had the intention [of extorting] the release of incarcerated members of the group. . . .

According to the substance of the diplomatic documents, Sieglinde Hofmann is seriously suspected of having participated in the assassination of Jurgen Ponto for the following reasons.

According to the information given by a messenger of the Red Army Faction, it was established that Sieglinde Hofmann had stayed in an apartment of the Red Army Faction used for the . . . conspiracy on the day of the assassination of Jurgen Ponto. . . .

Sieglinde Hofmann was still there [at the apartment some 20 km from the scene of the crime] around 2 PM, about 3 hours before the murder of Ponto in the company of a member of the group [who] . . . without any doubt . . . [was] one of the two inhabitants of Ponto's building. During this secret meeting, Sieglinde Hofmann was armed. . . .

According to the information of the messenger, Sieglinde Hofmann left the apartment with Brigitte Mohnhaupt after this secret meeting, . . . and took the train with . . . [her]. The requesting authorities mention the particularly close relationship between Sieglinde Hofmann and Brigitte Mohnhaupt . . . and her position within the Red Army Faction attests to her participation, as a co-conspirator, in the murder of Jurgen Ponto.

[ . . . . ]

On August 4, 1977, in a letter sent to the German Press Agency in Hamburg, the Red Army Faction claimed responsibility for the murder of Jurgen Ponto. Kurt Folkerts, a member of the group, during his trial before the Court of Justice of Utrecht on December 7, 1977, stated that the actions against Ponto and Schleyer had as their aim the release of prisoners.

These are the elements contained in the documents transmitted through diplomatic channels to support the request for extradition formulated by the authorities of the German Federal Republic based upon the arrest warrant of March 7, 1979 against Sieglinde Hofmann. This arrest warrant states that the charges against Sieglinde Hofmann are defined and sanctioned by the following provisions of the German Code of Criminal Law:

*Article 129(a):* regarding the constitution of an association or the participation in an association the aims or activities of which are to commit: homicide or genocide; offenses against personal freedom (in the cases provided for by article 239 (a) and (b)) . . . [and] offenses against the community (in the cases provided for by paragraphs 306 to 308-310b 1, 311, (1), 311 (a), 312, 316 (c)(1), 324). Article 129 provides for a penalty of imprisonment of six months to five years.

*Article 211:* regarding murder provides for a penalty of life imprisonment.

*Article 239(a):* regarding kidnapping with the aim of extortion provides for a penalty of at least 3 years imprisonment.

*Article 239(b):* regarding kidnapping with unlawful detention provides for a penalty of at least 3 years imprisonment.

Thus, Sieglinde Hofmann is sought for felonies and misdemeanors which, in the German Code of Criminal Law, comply with the requirements contained in article 3 of the Franco-German Agreement of November 29, 1951 which relates to felonies and misdemeanors sanctioned by a penalty of at least one year imprisonment.

The elements furnished by the requesting authorities and described hereabove establish, on the one hand, the existence of a type of activity characteristic of a criminal organization. According to article 265 of the French Code of Criminal Law, . . . the organization of "any . . . group, whatever the duration, however large or small its membership, [and] agreement to prepare or commit felonies against persons or property constitutes a crime against the peace." Article 266(1) of the same code punishes, with a ten to twenty year imprisonment, anyone who has been associated with such an organization or who has been a party to any agreement the aim of which is described by [the language of] article 265.

These provisions of the French Code of Criminal Law correspond to the elements furnished by the requesting authorities and the characterization given in the first item of the arrest warrant against Sieglinde Hofmann. They also comply with the conditions provided for in article 3 of the Franco-German Agreement regarding minimum sentences (at least a year of imprisonment).

The facts alleged by the requesting authorities in the second item of the arrest warrant which refer to the attempted kidnapping of Jurgen Ponto and his subsequent murder correspond in French Law to the crime defined and sanctioned, on the one hand, by articles 2, 341 and following of the Criminal Code and, on the other hand, by articles 295 and 304(3) of the aforesaid code. These articles provide, under the Chapter "Illegal Arrest and Sequestration of Persons," criminal penalties of at least ten years imprisonment or penalties of imprisonment of two to five years. Under the chapter [entitled] "Murder," [the penalty is] life imprisonment. Therefore, these penalties also satisfy the requirements of article 3 of the Agreement.

Under French law, in light of the circumstances in which the kidnapping and murder of Jurgen Ponto took place, Sieglinde Hofmann cannot be charged with the murder of Jurgen Ponto, as a perpetrator, or even as an accomplice. The elements stated in the diplomatic documents regarding the role played by Sieglinde Hofmann in the attempted kidnapping [and] murder of Jurgen Ponto thus cannot be considered [as satisfying the re-



quirements] of French Law. This [conclusion] applies to the facts furnished by the requesting authorities concerning the conditions in which the murder was committed.

The court, on the other hand, establishes that, from the same facts, there exist under the meaning of articles 59 and 60 of the Code of Criminal Procedure sufficient presumptions against Sieglinde Hofmann to render her an accomplice of the attempted kidnapping, knowingly aiding and abetting the perpetrators of this action . . . [in accomplishing] the acts which prepared and facilitated the crime.

Therefore, only a partially favorable opinion can be given on these items. These penalties also satisfy the requirements of article 3 of the Agreement.

Article 4 of the Franco-German Agreement of November 29, 1951 specifically provides that extradition will not be granted if the infraction giving rise to the extradition request is considered by the requested party, according to the circumstances in which it was perpetrated, as a political infraction, or as an act committed to further such an infraction, to execute it, to assure its effect, to procure its impunity, or as an act committed to prevent the accomplishment of a political infraction.

The infractions described in detail in the arrest warrant regarding the activities of the Red Army Faction, that is to say, felonies against persons and property, are crimes which by their object are not political but ordinary crimes.

The fact that these acts were allegedly perpetrated, according to the arrest warrant, with the intention of overthrowing and transforming through violence the established order in the German Federal Republic is not sufficient, in light of their gravity, to have them considered as having a political character.

Consequently, the voluntary membership [voluntary and knowing participation] of Sieglinde Hofmann since the summer of 1976 in such an organization which is reflected moreover by her participation in one of the crimes cannot then be considered as a political crime under the meaning of article 6 of the Agreement. For the same reasons, under the meaning of the same article, neither can her complicity in the attempted kidnapping of Jurgen Ponto be considered as a political infraction.

Article 1 of the Franco-German Extradition Agreement of November 29, 1951 provides that the contracting parties mutually agree, according to the rules and under the conditions provided for in the following articles, to hand over to each other the individuals sought by the judicial authorities of the requesting State. The request for extradition thus is not subordinated to any condition other than those provided for in the Agreement.

The provisions of article 1 of the Law of March 10, 1927 should not

supersede those of the Agreement, which are more recent and have a higher authority.

If articles 4 to 7 of the Franco-German Agreement describe the conditions in which extradition could or should be refused, those articles do not mention the political aim of the requesting State.

[ . . . . ]

In conclusion, . . . for these reasons, the court is of the opinion that a favorably put partial opinion has to be given, but only regarding the infraction of participation in a terrorist association and the attempted kidnapping of J. Ponto.

*In re Tuti*

August 26, 1975

Court of Appeal of Aix-en-Provence  
Chambre d'Accusation

[The court states that the accused, an Italian national, is wanted for and has been convicted by an Italian court of the attempted murder of several on-duty policemen. The extradition request also refers to charges of possessing explosives. The court notes that the procedure presents no irregularity and that all procedural requirements have been satisfied. The following excerpt relates to the political offense exception.]

[ . . . . ]

Tuti recognizes that the arrest warrant thus issued against him applies to him. He recognizes the materiality of the facts that are imputed to him. He maintains, however, that he acted in self-defense and within the framework of his activities as a member of the "Revolutionary National Group"—an organization which, according to Tuti, has committed several criminal acts of a political character.

The charges brought against Tuti must, on account of the nature and circumstances in which they were committed, be detached from the political struggle in which Tuti alleges to have been involved. Even if it were held otherwise, the benefit of immunity that attaches to the political character of an offense could not be applied in light of the particular seriousness of the charges and the use of means which reflect the base criminality [sanctioned] by the ordinary law.

*In re Tuti*

February 5, 1979

Court of Appeal of Aix-en-Provence  
*Chambre d'Accusation*

The Court of Appeal of Aix-en-Provence, . . . *Chambre d'Accusation*, ruling according to the provisions of the Law of March 10, 1927, has rendered the following judgment.

In light of the two extradition requests made by the Italian Government concerning . . . Mario Tuti, born on December 21, 1946 in . . . Italy, an Italian national. . . The court deliberated according to the law, the President of the court publicly pronouncing the judgment in these words.

Tuti had already been delivered to the Italian authorities on December 13, 1975, by virtue of a decree for extradition of the previous November 4. The order was made upon the favorable opinion given by the *Chambre d'Accusation* of Aix-en-Provence for the enforcement of an arrest warrant of January 26, 1975, issued by the Public Prosecutor of Florence following Tuti's conviction and sentencing to . . . a penalty of life imprisonment at hard labor. The extradition was granted exclusively for double aggravated homicide and attempted homicide of police officers in the exercise of their duties. It excluded the charge of possessing and carrying arms (not provided for by the French-Italian agreement on extradition).

The Italian authorities now request that the extradition also include other charges occurring before the granting of the request and different from those giving rise to the extradition. These charges are contained in: (1) an arrest warrant issued on December 23, 1975 by the examining magistrate of the Tribunal of Florence for the offense of illegal possession and carrying of weapons . . . on July 25, 1975; (2) an arrest warrant issued on May 15, 1976, by the Public Prosecutor of Florence for the offense of . . . illegal possession and carrying of explosives on the Florence-Rome railway line between April 12 and April 13, 1975; (3) an arrest warrant issued on May 8, 1976 by the examining magistrate of the Tribunal of Bologna for the criminal attempt against State security, i.e., placing explosive devices in a train . . . and causing the death of 12 people.

[ . . . . ]

According to article 3 of the Franco-Italian Agreement on Extradition of May 12, 1870 and article 5 (2) of the Law of March 10, 1927, the offenses of attempts against State security and membership in an extremist organization constitute political crimes and offenses of a political nature. Conversely, though the other offenses referred to in the extradition request are ordinary offenses, without any doubt, they are connected to political offenses.

Nevertheless, the extradition should not be refused; indeed, these

offenses, for the most part, belong to the type of offense which is sanctioned by moral considerations and the ordinary law. They have created a collective danger and have been committed in a context of violence in which recourse was had to base criminal means. Moreover, the extradition obviously is not requested for political reasons since the interested person is already imprisoned in the requesting State and sentenced to life imprisonment.

The charges of aggravated homicide, aggravated assault, [and] destruction of railway property . . . are included in the Franco-Italian Extradition Agreement . . . (article 2 No. 1, 5, 13, 31, 32). The charge of possessing and using explosive devices, however, is not included in the enumeration. Nothing prevents France, the requested State, from granting the extradition . . . [for grounds] not within the purview of an agreement as long as the national law permits it and the Agreement does not prohibit it. Such is the case here.

Finally, Tuti is not a French national, and the charges against him are sanctioned in France by . . . criminal penalties and in Italy by a penalty of at least two years of imprisonment. The acts were committed in Italy, and have not been the subject of proceedings or judgments in France. Prosecution is not precluded by passage of time either under Italian or French Law. . . . Accordingly, the requirements of article 2(2) of the Franco-Italian Agreement and article 5 of the Law of March 10, 1927 are satisfied.

For these reasons, the court gives a favorable opinion to the . . . [extradition request].

*In re Pace*

November 7, 1979

Court of Appeal of Paris  
*Chambre d'Accusation*

The following judgment was rendered in open court on November 7, 1979 on the request for the extradition of Lanfranco Pace, born on January 1, 1947 in . . . (Italy), of Italian nationality. . . .

By telegram on September 14, 1979, followed by an oral notice on September 15, 1979, through diplomatic channels, the Italian Government requested the provisional arrest of Lanfranco Pace with a view to his extradition.

On September 25, 1979, the Italian Government formulated against the named Lanfranco Pace a request for extradition.

On September 14, 1979, the Public Prosecutor proceeded to interrogate the interested party as to his identity; minutes of the interrogation were

taken. . . . [The accused was] committed . . . to prison while awaiting possible extradition.

On September 19, 1979, . . . the Assistant Public Prosecutor proceeded to interrogate the interested party; minutes of the interrogation were taken.

At the September 26, 1979 hearing before the *Chambre d'Accusation*, notice was given of the grounds upon which the arrest took place and of documents produced to support the request for extradition.

[ . . . . ]

All necessary procedures prescribed by articles 9, 10, 11, 12, 13, and 14 of the Law of March 10, 1927 regarding the extradition of foreigners have been complied with. The procedure is, therefore, correct in regard to formalities.

By oral notice on September 1979 issued through the Italian Embassy in Paris, the Italian Government requested, through diplomatic channels, the extradition of Lanfranco Pace . . . pursuant to the arrest warrant (No. 1482-78 AGI) issued against him on August 29, 1979 by Mr. Galluci, the examining magistrate of the Court of Justice of Rome.

According to this arrest warrant, Lanfranco Pace (as well as twenty-five other Italian citizens among whom Morucci, Faranda and Piperno) is charged with [some] forty-six counts of crimes and offenses hereinafter described: (1) Assassinations of . . . on-duty public officers on March 16, 1978, in Rome, in order to kidnap Mr. Aldo Moro (No. 1 of the arrest warrant); (2) Kidnapping of Mr. Aldo Moro, in Rome, from March 16, 1978 to May 9, 1978 (No. 2 of the arrest warrant); (3) Conditional threats to kill Mr. Aldo Moro, in Rome, on April 20 and 24, 1978 (No. 38 of the arrest warrant); (4) Assassination of Mr. Aldo Moro, in Rome, on May 9, 1978 (No. 17 of the arrest warrant); (5) Assassination of Mr. Ricardo Palma, High Court Judge, in the exercise of his duties, in Rome, on February 14, 1978 (No. 19 of the arrest warrant); (6) Murder of . . . senior police officials and violences against public officers, in Rome, on May 3, 1978 (Nos. 40 and 41 of the arrest warrant); (7) Attempted murder [of other persons in Rome] . . .; (8) Kidnapping of [political figures in Rome] . . .; (9) Organizing a group of criminals consisting of more than 10 people in order to commit robberies, to receive and conceal (stolen goods), to use falsified documents and to engage in kidnapping, in Italy, before March 16, 1978 (No. 39 of the arrest warrant); (10) Robberies with violence in Rome or within the Italian borders before March 16, 1978 (Nos. 6, 7, 13, 18, 28, 32, 44, and 46 of the arrest warrant); (11) Receiving and concealing of goods stolen in Rome, or within the Italian borders before April 18, 1978 (No. 12 and 22 of the arrest warrant); (12) Possession and carrying of war weapons, firearms, explosive missiles and munitions, in Rome, . . . (Nos. 3, 4, 17, 20, 21, 36, 37 and 42 of the arrest warrant); (13) Firing of weapons, release of explosive missiles

in order to commit an attempt on public security, to spread panic, in Rome, on April 26, 1978 (Nos. 30 and 45 of the arrest warrant); (14) Destruction and degradation of vehicles, degradation of property in Rome, on April 7, 1974 and April 19, 1978 (Nos. 25 and 29 of the arrest warrant); (15) Counterfeiting of vehicles license plates, State seals, of stamps authorized by the Italian Government, insurance certificates and circulation taxes, violation of the highway code, in Rome, in 1978 (Nos. 8, 9, 10, 11, 14, 15, 16, 23, 24, 33, 34, and 35 of the arrest warrant).

The role of the court is defined either in the Franco-Italian Agreement of May 12, 1870 or in the French Law for Extradition of March 10, 1927. The latter being subsequent to the Convention, is of a complementary and supplementary character. Accordingly, the French Judge is bound by the statement in the warrant; he cannot contest the materiality of the facts as described and must consider as established the characterization which is given to them with respect to the law of the requesting State.

However, he may, when he establishes the chronology of the facts for purposes of prescription, in light of all the documents transmitted through diplomatic channels, ascertain whether some or all of them may receive a penal characterization under the provisions of the French law. He also may verify whether this characterization, which can be different from the one given by the requesting State, corresponds to an offense enumerated in article 2 of the Convention.

Finally, he must ascertain that all the other requirements specified in the bilateral treaty are satisfied.

#### *Infractions Specified in the Convention*

The *Chambre d'Accusation* states that, among the forty-six charges included by the Italian examining magistrate in the arrest warrant issued on August 29, 1979 against Pace, twenty-seven of them do not correspond to charges appearing in the list . . . specified in article 2 of the Franco-Italian Agreement on Extradition of May 12, 1870. The exhaustive character of the list is expressly provided for by article 9 of the Agreement.

These twenty-seven charges include: receiving and concealing stolen goods; withholding and carrying of war weapons, firearms, explosive missiles and munitions; firing of weapons and the release of explosive missiles in order to disrupt public order and spread panic; destruction and degradation of vehicles, degradation of property; counterfeiting vehicle license plates, State seals, stamps authorized by the Italian Government, insurance certificates. . . .

Since these charges are not specified by the Franco-Italian Agreement for Extradition of May 12, 1870, the court must give an unfavorable opinion to the request for the extradition of Lanfranco Pace concerning these offenses.

Henceforth, in this case, the court's analysis will be limited to the grounds of arrest specified by the requesting State and which correspond to charges listed in article 2 of the Agreement of May 12, 1870: assassinations, murder, attempted murder, violence against public officials, kidnapping, threats to kill for extortion, organizing a criminal group, and committing robberies with violence. These charges are subject to 19 counts under paragraphs 1, 2, 5, 6, 13, 17, 18, 19, 28, 31, 32, 38, 39, 40, 42, 43, 44, and 45 of the arrest warrant of August 29, 1979.

At the hearing on October 24, 1979, the defendant requested that the file concerning Francesco Piperno be introduced in the current proceeding . . . on the ground that the arrest warrant which is the basis of the request for extradition of Pace is the same as the one concerning Piperno. The Court granted this request, noting that it was necessarily doing the same for the file concerning the first request of extradition of Piperno which led to the judgment already included in the former.

### *Facts*

First, the court must point out that the arrest warrant 1482-78 of August 29, 1979 includes 46 charges (of which only 19 appear in the list contained in article 2 of the Agreement). They concern not only Pace, but also 25 other individuals. In these circumstances, the *Chambre d'Accusation* must examine the evidence which the Italian authorities have taken into account, specifically against Lanfranco Pace, in analyzing the above mentioned arrest warrant and enclosed documents.

These documents point only to Pace's participation in the following incidents. On May 29, 1979, Morucci and Faranda were arrested in one Conforto Giuliano's apartment in Rome; they were found to be in possession of firearms, munitions, explosives and a document belonging to the Red Brigades.

On July 20, 1979, the Italian judicial authorities received the results of an expert evaluation of the weapons which had been seized, learning that one of the two weapons had been used to kill Mr. Aldo Moro and the High Court Magistrate, Ricardo Palma, [and that] the other one [had been used] during an attack against the headquarters of the Christian Democratic Party in which two senior police officers were killed.

From the . . . [admissions] and confession of . . . Conforto (friend and teaching colleague of Francesco Piperno), it became evident that it was she who had introduced Morucci and Faranda to him (under false identities), adding that Lanfranco Pace was interested in them. The defendant questions the significance of the last part of this sentence which relates exclusively to him [Pace]. [The accused believes that it] goes even further [than its explicit language], up to [the point of] considering "that Italian magistrates had a tendency to couple the name of Pace with the one of Piperno

... knowing of the friendship between the two men" (p. 5 of the pleadings).

However, the defendant has isolated the quotation from its context and disregarded the following sentence ... [which states that] "either Pace or Piperno knew about the association of Morucci and Faranda with the Red Brigades, as well as the fact that they were fugitives (see Department of the Public Prosecutor's report in Rome on September 20, 1979). These last clauses illustrate "the interest" that Pace had in the two fugitives.

Besides, other exact details about this subject also are brought out by the arrest warrant itself ... which states:

Reports and contacts arose between Piperno and Pace, and Morucci and Faranda during the time they were fleeing—because they ... were implicated, in the preliminary investigation, as being guilty of the charges stated in nos. 1 to 39 of the arrest warrant. Therefore, it follows, in fact, from the description of the acts, that Morucci and Faranda were helped by Piperno and by Pace to find a refuge ... in the apartment of ... Giulio Csare, which served to hide arms, explosives, documents and false seals.

The assertions of the Italian authorities on this point explain the reason why ... Conforto in her testimony judged it useful to reveal the interest that Pace had in Morucci's fate.

Other searches led to the discovery of a hut in which there was a room for keeping kidnapped victims. (See the report of the Department of the Public Prosecutor in Rome, on September 11, 1979, p. 7.)

At this time, there appeared the suprising analogies with the premises used as a prison for Mr. Aldo Moro, as revealed in drawings published in the magazine *Metropoli*. According to the investigators, these drawings involved "very significant details concerning Mr. Aldo Moro's place of confinement, which could only ... come from a particularly well-informed source concerning the true development of the facts." (See the report of the Department of the Public prosecutor, in Rome, on September 20, 1979, p. 4.)

The court, it must be emphasized, does not question the assertions of the requesting authorities—and even less [does it] attempt to take the place of the Italian examining magistrate. ...

In order to demonstrate the inconclusive character of the evidence, the defendant brought before the court issues of the magazine *Metropoli*—a document that the defendant considers indispensable to the court's rendering of an opinion on good grounds. Without engaging in a detailed scrutiny, the court observes that ... the document before it contains not only the drawing of a common place of imprisonment, but also more than fifty drawings joined with captions or subtitles, which retrace ... hour by hour,



the kidnapping of Mr. Aldo Moro, and of his confinement until his last moment of life.

Moreover, the court established that the requesting authority, far from speaking about only one drawing, always has mentioned the existence of drawings in which "were inserted some very significant details regarding Mr. Aldo Moro's imprisonment, which could be, by reason of their specific character, the fruit of an *imagined reconstitution*, but which seem, on the contrary, to come from a *particularly well-informed source concerning the true development of the facts*." Moreover, the Italian authorities add that "an inquiry is continuing on these details," revealing the scope of the investigation to be far from limited to the examination of the location of the confinement.

Noting the importance that the defendant attaches to this document, the court has decided to put it in the procedural file, but, for other reasons previously indicated, rejects the contentions of Mr. Pace's counsel on this matter.

The same drawings contain in their subtitles or legends "some clear and obvious allusions to contacts that parliamentarians have had with people involved in the terrorist group . . . in order to negotiate for Mr. Aldo Moro's release . . ." The official documents do not mention at all, as the defendant contends, ignorance of the existence of the negotiations, but "on the contrary, establish" that the judges ignored *the circumstances of "the said negotiations"* until they learned of them by the publication of the above-mentioned magazine and obtained an entire and textual account only after the required investigation procedure."

This investigation revealed, in effect, a two-fold participation of Pace in the said negotiations on May 4 and 5, 1978, in concert with Piperno and on May 6, alone, as indicated in the reports of September 11 and 20, 1979 (Department of the Public Prosecutor in Rome).

In this connection, it is not true to allege as the defendant does that a "difference" exists between these two documents: the first pointing to a single participation by Pace while the second reveals there to be two of them. In fact, from a careful and complete reading of the Department of the Public Prosecutor's first report (September 11, 1979), it is stated (on page 9) that "on the following 6th of May . . . Lanfranco Pace (who had gone with Piperno in a *previous conversation* with a member of Parliament) contacted the same representatives of the parliament. . . ."

From the examination of the transmitted documents, the court may, without any difficulty, establish the unfolding of the negotiations undertaken from April 24 to May 6, 1978. The court observes in this connection, that Pace's last intervention took place at the most intense moment of the dramatic process. In fact, during this final intervention, the Italian authorities pointed out "that, on May 5, 1978, the Red Brigades had released an

official statement giving the news that the judgment to which Aldo Moro was condemned, was executed, meaning that he had been killed."

On May 6, when it was feared that the Italian statesman had already been killed, Pace contacted a member of Parliament and managed to assuage the parliamentarian's uncertainty about the safety of Mr. Moro. [Pace stated] that the situation, although serious, could be brought to a positive end, reiterating that the intervention of a representative of the Christian Democraft Party was necessary.

On the other hand, the inquiries promptly made by the Italian authorities permitted the Public Prosecutor of Rome, in his reports, to include against Pace (as well as Piperno) the fact that . . . [they] were aware of two circumstances unknown to the public: [first,] the necessity of having a representative of the Christian Democraft Party enter the negotiations (a fact never revealed by the Red Brigades' statement); [second,] the substance of a telephone call to Mr. Moro's residence made on April 30, 1978 . . . by Antonio Negri (closely associated with Piperno, Pace and Morucci) —a call which had not been revealed by the newspapers.

Concerning the *Metropoli* magazine, the Public Prosecutor of Rome, in his report of September 20, 1979 (p. 3), points out Pace's effective participation as the head of the above-mentioned magazine, founded by Piperno and Scalzone, and to which Morucci and Faranda also contributed, according to their own confessions and that of . . . Conforto.

Lastly, in his report of September 11, 1979 (p. 11), the high magistrate indicates once again that "following the confession of some of the accused people . . . [it was learned that] a part of the money coming from several offenses (e.g., attempted murder, kidnapping, robbery) had been used to finance *Metropoli*."

The previous analysis, relating to the set of facts charged against Pace by the Italian authorities, constitute for the court, according to the French law, substantial . . . evidence, but only for the kidnapping and assassination of Mr. Aldo Moro, as provided for in numbers 2 and 17 of the arrest warrant. The *Chambre d'Accusation*, in fact, does not find in the file which is submitted to it and especially concerning Pace, any element related to the other infractions contained in the warrant.

Consequently and henceforth, the court considers that it will give an unfavorable opinion to the request for the extradition of Pace on the basis of the seventeen other offenses—despite their being included in the exhaustive enumeration provided for in article 2 of the Franco-Italian Agreement on Extradition of May 12, 1870, and in the arrest warrant. . . .

Without being able to modify the legal characterization attributed by the requesting State to the charges, the court observes that the Italian judicial authorities see in Lanfranco Pace's conduct that of a perpetrator and co-conspirator. Nothing in the file which is submitted to the court,

however, allows it to consider that the interested person has been the material agent who has committed in whole or in part some of the acts during the commission of the offenses which are brought against him.

Under the meaning of articles 59 and 60 of the French Penal Code, there does exist sufficient evidence against Pace of *being an accessory* by help, order or assistance [*i.e.*, aiding and abetting] in the kidnapping of Mr. Aldo Moro and his . . . assassination. The complicity in the commission of these two offenses being set out in articles 1 and 2 of the Franco-Italian Agreement of Extradition, the principle of double criminality is then perfectly respected.

In addition, kidnapping and assassination are crimes set out in articles 630, 575 and 577 of the Italian Penal Code and complicity in the same infractions is set out in French Law under articles 59, 60, 296, 297, 302 and 341 of the French Penal Code.

Moreover, the Court establishes that crimes of kidnapping and assassination, which, in light of their date (between March 16, and May 9), are not time-barred according to the law of the concerned States, are punished by the law of the requesting State by a penalty greater than the minimum of two years of imprisonment set out in the article 2 of the Agreement of May 12, 1870 and in article 4 of the French Law of March 10, 1927.

Therefore, except for the possible political aspect . . . [of the charges], facts, or request, the request of the Italian State presumably satisfies, for only the two above-mentioned offenses, the legal requirements for a valid extradition request.

#### *Political Aspect of the Facts*

The charges of kidnapping and assassination of Mr. Aldo Moro as charged by the Italian authorities unquestionably appear to be common law crimes.

The court, however, cannot knowingly exclude the fact that these crimes may have been committed in a political context which allows the defendant to invoke, subsidiarily, their political character and to solicit an unfavorable opinion to the extradition request.

But, the court points out the extreme gravity of the charges brought against the accused. More than the physical and mental torture that the kidnapping of several weeks implies, the charges involved the assassination of a kidnapped and guiltless, innocent person. Whatever the desired aim or the context in which such facts evolved, they cannot, because of their gravity, be seen as having a political character.

This is the principle upon which the provisions of article 5(2)(2) of the Law of March 10, 1927 are based. It allows extradition for acts committed during an insurrection, rebellion or a civil war when they involve heinous acts of cruelty and barbarity. Now, if the foregoing law eliminates the

protection afforded to acts committed for political reasons (no matter how they are perpetrated) in the very substantial circumstances occurring during a period of open hostilities which characterizes rebellion, insurrection or a civil war, *a fortiori* the same is true when, in absence of these extreme positions, legal institutions of the requesting country are normally and wholly functional.

[T]he drafts of the Law of March 10, 1927 demonstrate that the intent of the legislator was not to bind the court of extradition to a particular definition of political offense, leaving it to the court in its discretion to assess, according to the development and evolution of the jurisprudence and scholarly writings (either national or international), which aspect of the offense was the most important—its political aspect or common law character.

There was, however, no doubt in the minds of the legislators of this time that the text, as submitted to them, "allows extradition for every connected and complex offense the rude, wild or inexcusable character of which would shock the universal consciousness." That is the true meaning of the provisions set forth in article 5(2) of the above-mentioned Law of 1927.

Presently, the development of ideas, on the national and international level, can only strengthen such a point of view. In the court's estimation, with the assassination of a man who, although the leader of a [political] party, did not have the responsibility of power, the political context wanes in the face of the hideous character of the aggression.

An opposite reasoning would imply that every person can suffer [a violation of] . . . his physical integrity until death for the reason of his convictions or his functions.

#### *Political Aim of the Request*

To comply with the provisions of the article 5(2) of the French Law of March 10, 1927, the court finally must ascertain if the circumstances [of the case] suggest that the extradition request is formulated with a political aim by the requesting State. On this matter, the *Chambre d'Accusation* can only make the following statements.

First, the court reiterates that the charges involved in the arrest warrant (Nos. 11, 82, 78) present a common law character. Second, the court observes that, in its report of September 20, 1979 (translation p. 3), the Public Prosecutor of Rome indicated that, on June 6, 1979, a summons was issued against "Pace for the offense of establishing an armed group." In addition, the report carefully notes that in the summons a qualification was made for "indictment in order to discover other offenses, while waiting for the result of the ballistic test of the weapons found in possession of Morucci and Faranda."

Contrary to the defendant's arguments on this point, the duality of

pursuits shows, as the court had already pointed out in its judgment of October 17, 1979 concerning Piperno, that the said request is based exclusively on common law offenses.

[ . . . . ]

With these facts in mind, the court concludes that the request is not presented with a political end. Nevertheless, the defendant could advance his defense before the Italian examining magistrate, the only one competent to appreciate its value at this stage of the procedure and invoke the principle of speciality.

[ . . . . ]

The court is of the opinion that it is advisable to receive favorably but partially and only concerning the two offenses set forth in numbers 2 and 17 of the arrest warrant of August 29, 1979, the request for extradition brought by the Italian government against one Lanfranco Pace. . . .

*In re Piperno*

October 17, 1979

Court of Appeal of Paris  
*Chambre d'Accusation*

This judgment was rendered in open court on October 17, 1979 on the request for the extradition of Francesco Piperno born on January 5, 1942 in Catanzaro (Italy) of Italian citizenship.

[ . . . . ]

By oral notice of September 10 and 11, 1979 transmitted by the Italian Embassy in Paris, the Italian Government requested through diplomatic channels the extradition of Francesco Piperno, an Italian national born on January 5, 1942 at Catanzaro (Italy). [The extradition request was based] upon an arrest warrant (No. 1982-78 AGI) issued against Mr. Piperno on August 19, 1979 by [Italian judicial authorities].

. . . According to this arrest warrant, Francesco Piperno . . . is charged with 46 . . . offenses . . . [including, complicity in the murder of on-duty public officers, the kidnapping and murder of Aldo Moro, the murder of a prominent Italian judge, the attempted murder and attempted kidnapping of several other persons, association with a criminal organization, aggravated theft, possession of weapons and explosives, destruction of property, counterfeiting license plates and government stamps, etc.].

[ . . . . ]

The court's role is defined . . . by the Franco-Italian Agreement of May 12, 1870 and the French Law on Extradition of March 10, 1927. The latter, being subsequent to the former, has a complementary and supplementary character. Accordingly, the French judge is . . . bound by the statements

contained in the warrant. He cannot contest the materiality of the facts that are set forth and must accept the characterization attributed to them by the legislation of the requesting State.

Nevertheless, the French judge must ascertain whether . . . the charges have not been prescribed and whether, from the description contained in the documents transmitted through diplomatic channels, some or all of the charges may receive a criminal characterization under the provisions of the French law. [In addition,] he must ascertain whether that [French law] characterization, possibly different from the one given by the requesting State, corresponds to an offense enumerated in article 2 of the Agreement. Lastly, he verifies that all the other requirements of the bilateral treaty are satisfied.

The court finds that, among the 46 charges contained in the Italian . . . arrest warrant . . . , 27 of them do not correspond to charges which are enumerated in article 2 of the Franco-Italian Agreement on Extradition of May 12, 1870. The exhaustive character of this enumeration is expressly set forth in article 9 of the aforesaid Agreement. [After listing these charges, the court concludes that the extradition request for Piperno cannot be granted on the basis of these unlisted charges.]

. . . The court will limit its analysis to the charges retained by the requesting State and which appear in the article 2 enumeration. These charges are: assassination, murder, attempted murder, acts of violence towards public officials, threats of murder, participation in a criminal organization, and aggravated burglary.

[ . . . ]

[The court entertains the defense argument that, since a previous request for Piperno's extradition contained these same charges and was rejected, this new request should also be denied. The court goes through an elaborate discussion of the documents, concluding that the charges in the new request arise from a different investigation. The contention of the defense is rejected on this basis. The court concludes:] . . . [F]rom the foregoing analysis comparing the two extradition proceedings (an analysis desired by the defense), it follows that [the first investigation, the basis of the former request] . . . , in addition to its specific chronology, covered only a set of charges . . . relating to general criminal activity leading to the creation and development of an armed group, incitement to armed insurrection against . . . the State and incitement to [bring about] . . . civil war. . . . The request for extradition which is presently before the Court and which is based upon the [second] arrest warrant . . . relates to specific and distinct facts which are by their nature and object ordinary offenses. Consequently, the court rules the defense arguments to be groundless and rejects them.

The foregoing analysis reveals that . . . [the second investigation] point-

ed to the four following indications of culpability: The fact that Piperno obtained safe hiding for two persons . . . unknown to him (this factor implying knowledge of their activities) and the fact that Piperno went into hiding, was wanted for criminal charges and was in possession of weapons used to assassinate Mr. Aldo Moro . . . [and other victims]; the fact that the publication, [known as] *Metropoli*, a publication to which Piperno . . . [and others] contributed, published illustrations which reproduced the topography [of a location] which later appeared to be the exact [topography] of the location where Mr. Aldo Moro was held. [The illustration was published] at a time when his whereabouts were unknown, thereby, implying . . . a perfect knowledge of the location [on Piperno's part]; the other revelations made by the same publication relating to the negotiations . . . [and other aspects of the Aldo Moro case]. . . . Piperno's role in setting and modifying the conditions of Mr. Aldo Moro's release and fate, implying the importance of the defendant's role in this matter.

The court notes that the first of the foregoing factors constitutes the only element which covers the [various] assassinations of . . . [persons other than Mr. Moro] . . . , [and that] none of the other factors are related to these offenses. Therefore, the *Chambre d'Accusation* considers that only one is completely operative to allow, in French law, the arrest of Piperno for these charges.

The same reasoning applies . . . [to the other charges, *i.e.*, the kidnapping of other persons, violence against public officers, aggravated theft, association to a criminal organization]. . . . However, each of the four foregoing factors affect the conduct of Piperno in regard to the sequestration of Aldo Moro, threats of death against him and his assassination.

[T]he court notes that the threats of death constitute, in French law, an ordinary offense . . . which is sanctioned by a penalty less than the minimum of two years of imprisonment required by the Extradition Agreement. Consequently, in the court's opinion, only the charges relating to the sequestration and assassination of Mr. Aldo Moro can possibly be retained.

With regard to the charges which could be based on the aforementioned indications of culpability, the court observes that the Italian . . . authorities characterize Piperno's conduct as one of perpetrator or co-conspirator. Nothing, nevertheless, in the brief which is submitted to it allows the court to consider that Piperno had been a material agent who executed wholly or partially the acts giving rise to the charges brought against him. However, according to the meaning of articles 59 and 60 of the French Code of Criminal Law, the same factual elements point to the existence of sufficient evidence against Piperno to consider him as an accomplice, that he aided and abetted in the sequestration of Mr. Aldo Moro and his assassination.

The characterizations given by the Italian authorities [to these facts], which cannot be reviewed by the court, are provided for in article 2 of the

Franco-Italian Agreement of May 12, 1870. Those allegations of complicity in the commission of these same offenses, which correspond to [an offense in] French law, are also defined by articles 1 and 2 of the aforesaid Agreement. Accordingly, the principle of double criminality is perfectly respected. Moreover, sequestration and assassination are crimes defined by articles 630, 575 and 577 of the Italian Code of Criminal Law; complicity [in the commission] of these same offenses is defined in French law by articles 59, 60, 296, 297, 302 and 341 of the French Code of Criminal Law. . . . The prescriptive period has not run on these charges. In regard to the legislation of each of the concerned States, [these crimes] are sanctioned by the law of the requesting State with a penalty greater than the minimum of two years of imprisonment, as required by article 2 of the Agreement of May 12, 1870 and by article 4 of the French Law of March 10, 1927.

Consequently, without prejudice to the issue of the possible political character of the charges and the possible political motive underlying the request, the Italian Government's request complies, up to now only for two of the abovementioned offenses, with the legal requirements established in extradition matters.

The court, in several instances, has already asserted that the charges in the instant case are ordinary common law crimes. Nevertheless, the court should not avoid taking into consideration the fact that these activities could have taken place in a political context. This factor allows the defense to invoke, in subsidiary fashion, the political character and to request that the court render an unfavorable opinion in the extradition of Piperno.

The *Chambre d'Accusation*, however, points to the extreme gravity of the acts. In addition to the physical and mental torture implied by a sequestration of several weeks, there was the assassination of a sequestered and innocent person. Whatever the desired aim or the context in which such acts took place, they, in light of their gravity, cannot be considered as having a political character. This is the underlying principle of the substance of article 5(2)(2) of the Law of March 10, 1927 which allows extradition where acts of odious barbarism are committed during an insurrection or a civil war.

As a consequence, if the Extradition Statute disregards the political motive underlying the most serious act which is committed during a period of declared violence characteristic of insurrection or civil war, it follows, *a fortiori*, that the same reasoning applies when—in the absence of these extreme conditions—the legal institutions of requesting State are fully operative. Quite evidently, a contrary reasoning implies that any person can suffer [a violation] of his physical integrity until death on account of his convictions or his functions. The defense did not fail in its pleadings to assert several times its objection to such a possibility.



Accordingly, the court concludes that the offenses do not have any political character.

To comply with the provisions of article 5(2) of the French Law of March 10, 1927, the court must, finally, ascertain whether the circumstances reveal that the extradition request was formulated by the requesting State with a political end. In regard to this issue, the *Chambre d'Accusation* can only make the following declarations. First, the court points out once again that the charges in the arrest warrant . . . have an ordinary common law character. Second, the Italian authorities have taken care . . . to organize an investigation independent from the first one which points to common law offenses. . . .

Moreover, by virtue of the principle of specialty . . ., the requesting State cannot prosecute the defendant . . . for crimes which have been rejected specifically by the requested State. This principle applies as well to the whole of the charges contained in the [first] arrest warrant [as well as the second warrant and request]. . . . In this setting, the Italian Government could not request the extradition of Piperno for ordinary crimes with the purpose of [prosecuting him for other different charges]. . . .

Thus the court is of the opinion that the second request for extradition which is at bar today has not been introduced with a political aim.

...

[ . . . . ]

The court is of the opinion that it is advisable to receive favorably but partially and only concerning the two offenses . . ., the request for extradition brought by the Italian government against Francesco Piperno.

...

*In re Bellavita*

June 7, 1978

Court of Appeal of Paris  
*Chambre d'Accusation*

The *Chambre d'Accusation* of the Court of Appeal of Paris, first section, pronounced judgment in open court, after the public hearing on May 10, 1978, on a request for extradition issued according to provisions of the Law of March 10, 1927 which describes the rules, the procedure, and the effects of the process of extradition.

The person sought, Antonio Bellavita, an Italian national for whom the Italian Government has made an extradition request, came before the . . . court assisted by [legal counsel and an interpreter]. . . . The President of the Court proceeded to question the above-mentioned foreign defendant and a report of this examination was drawn up according to the law.

[Both sides were heard in their arguments, including the Assistant Public Prosecutor, the legal counsel, and the defendant]. . .

Then, the President, at the hearing held on June 7, 1978, with the *Chambre d'Accusation* being composed of the same members as in the previous hearings, rendered the following judgment in open court.

[ . . . . ]

All the necessary procedures prescribed by articles 9, 10, 11, 12, 13, 14 of the Law of March 10, 1927 have been complied with; the procedure is, therefore, correct in regard to [the legal] formalities.

On April 1, 1978, the Italian authorities introduced, through diplomatic channels, a request for extradition of Antonio Bellavita, an Italian national, born on March 22, 1928 in Milan (Italy). [The extradition request] was based upon three arrest warrants delivered on October 29, 1974, April 28, 1976 and November 22, 1976 by the examining Judge in Turin. The request, therefore, complies with the requirements of the article 9 of the Franco-Italian Agreement on Extradition of May 16, 1870.

The first of these warrants, dated October 29, 1974, states that the charges against Bellavita are defined and sanctioned by articles 270 and 306 of the Italian Code of Criminal Law. These charges involve participation in an armed and subversive association and the defendant's activities in several places (particularly in Milan) during the years 1973-1974 as a member of the armed group called "Red Brigades"—the goals of which are to overthrow the social and economic system of Italy through the use of violence.

. . . [T]he second warrant, dated April 28, 1978, incorporates the foregoing charge and also includes charges against Bellavita as defined and sanctioned by articles 270 and 306 of the Italian Code of Criminal Law. This time the charges also involve the organization of the armed group called Red Brigades, carrying a prison term of 5 to 15 years. . . . According to the Italian authorities, the [evidence indicated that] . . . Bellavita had a role of particular importance, not a subordinate one, in the framework of the organization.

. . . The third warrant, dated November 22, 1976, states that the charges against Bellavita are defined and sanctioned by article 303 of the Italian Code of Criminal Law. The charges here involve public incitement to commit offenses against the State. [According to the warrant, Bellavita], in his capacity as director and editor-in-chief of the Magazine *Contro. Informazione* (published in Milan) in association with Tommei Francesco, his principal collaborator, published . . . reproductions of publications and slogans exhorting armed opposition against the State and glorifying the criminal actions of the Red Brigades.

. . . In support of these warrants, the Italian authorities have presented several documents showing the results of a search conducted in Rob-

binano, a Red Brigades base of operation. During this search, numerous hand-written or typed notes, letters, and other documents belonging to Bellavita were found; these documents relate to the organization of the Red Brigades.

The Italian authorities also maintain that several documents were found on October 6, 1975 in an abandoned car. These documents are attributable to Bellavita; in them, he professes to be a militant and expresses himself on the objectives and motives of the subversive organization. Lastly, the petitioning authorities point out, in a memorandum received by the examining judge on February 10, 1975, Bellavita explained the reasons for his escape and affirmed that the choices of the themes of his magazine were determined by the desire to give information about "*la lutte armée*" and to reveal the new possibilities of revolutionary organization.

Moreover, in a note of July 13, 1974, attached to the above-mentioned arrest warrant, the examining Judge of Turin deems that in light of the unambiguous evidence . . . collected against Antonio Bellavita: "The militant action of the defendant as an organizer of the Red Brigades can be considered as established for purposes of trial." The same judge also stated that the real aim of the magazine *Contro. Informazione* was not to give information about the armed struggle, but rather to act as the "mouthpiece" [of the revolutionary group] by exalting their actions and publicizing their destructive program.

. . . Neither the provisions of the French Law of March 10, 1927 relating to the extradition of foreigners, nor the Franco-Italian Agreement of Extradition of May 12, 1870 allow the requested State to review the merits of the evidence or charges upon which the requesting State makes its extradition request. On the other hand, it falls upon the present court, taking into account all the elements brought before it, to ascertain whether the request conforms to the legal requirements of the Agreement of May 12, 1870.

The substance of article 1 of that agreement provides that the contracting parties mutually agree to hand over to each other, with the exception of their own nationals, individuals sought or condemned by a competent tribunal as the perpetrators or accomplices of crimes or offenses enumerated in article 2. That article provides an exact and exhaustive list of 35 crimes or offenses or group of crimes and offenses—the prosecution and punishment of which could allow the extradition of the defendant or the guilty party. In the instant case, the request of the Italian Government involves three types of charges against Antonio Bellavita: (1) participation in an armed group and subversive organization; (2) organization of this armed group and of this subversive association (noting that the two arrest warrants relating to these charges are founded, both of them, upon the articles 270 and 306 of the Italian Code of Criminal Law); (3) public instigation to commit offenses against the State (noting that the arrest

warrant relating to this third charge is founded upon the articles 303, 110 and 81 of the Italian Code of Criminal Procedure).

On the first two charges, article 306 of the Italian Code of Criminal Law defines an "armed group" as one which is created to commit one of the offenses provided for by article 302 of the same code, that means all the offenses provided for by Chapters I and II, under Title I "Offenses against the State." A subversive association, according to article 270(2) of the Italian Code of Criminal Law, is one which has for its aim the violent suppression of all the political or judicial structures of society; this text appears also under the same Title I of the above-mentioned code entitled: "Offenses against the State."

The infractions defined by articles 306 and 270 of the Italian criminal law correspond to the ones provided for by articles 95 and 87 respectively of French Code of Criminal Law. Indeed, article 95 punishes the individual who leads an armed group or who exercises a position of leadership with the aim of disrupting the State by one of the crimes provided for by articles 86 and 93. Article 87 deals with conspiracy which involves the crimes mentioned in article 86—in other words, the attempt to destroy the constitutional regime, the incitement of citizens to arm themselves against the authority of the State. These different articles of the French Code of Criminal Law are listed together under the chapter of "Crimes and Offenses against the Security of the State."

... The crimes and attempted crimes of armed groups defined above by the French Code of Criminal Law and related to the charges provided for by articles 306 and 370 of the Italian Code of Criminal Law are not in the list of the 35 crimes and offenses enumerated in article 2 of the Franco-Italian Agreement on Extradition of May 12, 1870. As it has been maintained by the defendant at bar and the Public Prosecutor, the first two charges brought by the Italian authorities against Bellavita cannot be confused with the charge of criminal organization (*association de malfaiteurs*) which, on the contrary, appears at number 16 in the enumeration provided for by article 2 of the Convention.

Indeed, under French Law, the charge of criminal organization (*association de malfaiteurs*), defined and punished by article 265 of the Criminal Code, constitutes a crime "against the peace". . . [I]t consists of any agreement, whatever its duration, [of any group], however large or small its membership, created to commit or to prepare to commit felonies against persons or properties and appears under the Chapter of "Crimes and Offenses against the Peace." A criminal organization, as defined by article 265, cannot be identified with the "Crimes and Offenses against the Security of the State" (French Criminal Code) or with the "Offenses against the Person of the State" (Italian Criminal Code). . . Moreover, the crime of criminal organization (*association de malfaiteurs*), which appears in article 2 of

the Franco-Italian Agreement of May 12, 1870, was provided for and punished at this time by the French Criminal Code; the Law of December 18, 1893 has only enlarged its scope.

Moreover, the Italian Criminal Code also recognizes, under article 416, a form of association of delinquents entitled: "Association with a View to Commit Offenses." This article punishes persons who are associated, create or constitute an association of at least 3 persons with the view to commit offenses. Article 416 appears under Title V of the Italian Criminal Code under the rubric "Offenses against the Public Order" which corresponds in French law to the Chapter "Crimes and Offenses against the Peace."

Therefore, there exists indeed a correspondence between article 265 of the French Criminal Code and article 416 of the Italian Criminal Code. None of the arrest warrants issued by the examining Judge of Turin falls under the so-called article 416. Whereas, the choice of the criminal characterizations given to the facts by the requesting State are imposed upon the requested State, the latter can only draw the judicial consequences from the facts as characterized.

. . . In these circumstances, the court concludes that the charges brought against Bellavita by the arrest warrant of October 29, 1974 and April 28, 1976 are the ones provided for by articles 306 and 270 of the Italian Criminal Code, corresponding to articles 95 and 87 of the French Criminal Code, and that they relate in Italian law to "Offenses Against the State" and in French law to "Crimes and Offenses Against the Security of the State." These charges, however, do not appear in the enumeration of article 2 of the Franco-Italian Agreement on Extradition of May 12, 1870—an enumeration which article 9 of the said convention expressly describes as exhaustive.

On this first point, the court, therefore, renders an unfavorable opinion for the extradition of Antonio Bellavita.

On the third charge, . . . the third arrest warrant issued against Bellavita, dated November 22, 1976, is based on articles 303, 110 and 81 of the Italian Criminal Code. Article 303 describes the charge of public incitement to commit offenses against the State. Articles 110 and 81 are not related to the substance of the infractions, but to the penalties applicable in case of cumulative infractions.

. . . Under French law, the denounced acts constitute the "provocation of crimes and offenses committed through the media," provided for by the article 23 of the Law of July 29, 1881. These charges, however, do not appear in the exhaustive enumeration of article 2 of the Agreement of May 12, 1870. The court, therefore, also renders on this last point an unfavorable opinion for the extradition of Bellavita.

For these reasons the court is of the opinion that the request for extradi-

tion brought by the Government of Italy against one Antonio Bellavita should be unfavorably received.

*In re Bonaglia*

January 16, 1979

Court of Appeal of Paris  
*Chambre d'Accusation*

[ . . . . ]

On October 19, 1978, the Italian authorities introduced through diplomatic channels a request for the extradition of Cesare Bonaglia . . . on the basis of an arrest warrant issued on May 11, 1977 by the Public Prosecutor of Milan for the charges listed in articles 110, 270 and 378 of the Italian Code of Criminal Law. Accordingly, the requirements of article 4 of the Extradition Agreement between France and Italy [of May 12, 1870] are satisfied.

The legal documents transmitted by the Italian authorities establish that Cesare Bonaglia is charged . . . [along with others] with the offense defined and sanctioned by article 270 of the Italian Code of Criminal law: having (in January 1977) promoted, constituted and organized an organization entitled the "Worker Autonomy" [group]. [The aim of this organization was] to establish, through violence, the dictatorship of the proletariat and overthrow the social and economic order of the State. [The group] advocated energetically its theory that armed struggle was the sole effective means to resolve political conflicts. . . . [To accomplish its ends, the group] organized public meetings . . . and committed an undetermined number of offenses—such as the illegal possession of arms, receiving and concealing of stolen goods, using falsified documents, etc.

The court notes that the requesting authorities have grounded the foregoing offenses exclusively upon the provisions of article 270 of the Italian Code of Criminal Law. According to the transmitted documents, these provisions deal with subversive associations. The article reads:

Anyone who, within the territory of the State, encourages, constitutes, organizes or controls an association which advocates, through the dictatorship of one social class over the others, the destruction through violence of the economic or social order within the State is punished by imprisonment of 5 to 12 years.

The same sanction applies to anyone who, within the territory of the State, encourages, constitutes, organizes or controls an association the objective of which is the violent destruction of the entire political and juridical structure of Society.

Whoever participates in such associations is punished by imprisonment of 1 to 3 years.

The sanctions are greater for those who reconstitute, even under a public identity . . . , the aforesaid associations the dissolution of which would have been ordered.

[The legal documents transmitted by the Italian authorities also establish that] Cesare Bonaglia is charged . . . with the offense defined and sanctioned by articles 110 and 378 of the Italian Code of Criminal Law. In February 1977, he aided an undetermined number of escaped prisoners who were actively sought by the [police] authorities by misleading the preliminary investigation. . . . This second charge brought against Bonaglia by the requesting authorities is specifically grounded on the provision of article 376 of the Italian Code of Criminal Law. The latter defines . . . "personal complicity" and reads as follows:

Whoever, after the commission of an offense which the law sanctions with life imprisonment . . . , although not participating in the commission of the offense, helps someone to mislead the preliminary investigation of the authorities . . . , is punished by imprisonment of up to 4 years. If the offense is sanctioned by a different penalty . . . , the penalty [for personal complicity] is a fine of up to two hundred thousand liras. The provisions of this article apply even when the aided person cannot be convicted or it is determined that that person did not commit the offense.

[ . . . ]

[The court summarizes in usual fashion the salient and applicable points of the law relating to extradition, namely, that the court is bound by the characterizations given in the documents and that the listing of extraditable offenses contained in the Convention is exhaustive. The latter was expanded by an agreement between France and Italy in 1912 to include possession of stolen goods and aiding and abetting criminals.] . . .

With regard to the first charge, . . . [relating to] [t]he "subversive organization" . . . the purpose of which is the violent destruction of all political or juridical structures of Society, the offense . . . appears in Title One of the . . . [Italian] Code entitled "offenses against the State." . . . [T]his infraction does not appear in the restrictive list contained in article 2 of the Agreement of May 12, 1870. This infraction cannot be equated with the infraction referred to . . . in article 2 under the name "association of criminals." Indeed, the Italian Code of Criminal Law [contains a provision] . . . , article 612, which refers to a form of association of delinquents known as "association with the view to commit offenses"; it punishes persons who participate in, create or constitute an association consisting of at least three

persons for the purpose of committing crimes. . . . [This] article appears in Title V of the Italian Code of Criminal Law under the title "Offenses against the Public Order." [This] . . . corresponds in French law to the Chapter "Crimes and offenses against the Public Peace," under which is included article 265 of the French Code of Criminal Law defining and sanctioning [the offense] of "the association of criminals" . . . provided for by article 2 of the aforesaid Agreement.

However, . . . the infraction listed in article 270 of the Italian Code of Criminal Law under the title "subversive associations" binds the requested State. The foregoing infraction is fundamentally different from [the charge] of "association of criminals" and is not listed in article 2 of the Agreement of May 12, 1870. . . . [C]onsequently, it is not necessary to determine whether the principle of double criminality applies in the instant case. . . . On this first point, [the court renders] an unfavorable opinion regarding the request for the extradition of Cesare Bonaglia.

With regard to the second charge of "personal complicity": . . . article 378 of the Italian Code of Criminal Law, upon which the requesting State bases its charge, provides for a particular offense; . . . the offense consists of aiding and abetting someone suspected of committing a crime punished by life imprisonment to mislead the investigation of the authorities or to protect the [alleged] perpetrator from the official inquiry. [The question is raised] . . . whether this sort of offense corresponds in French law to the offense defined and sanctioned by article 61(2) of the Criminal Code and . . . [is the equivalent] of the crime of concealing criminals. [The latter] . . . is expressly listed in the 1912 . . . Agreement which supplements the restrictive list of crimes and offenses contained in article 2 of the Agreement of May 13, 1870. . . . In this case, double criminality requires that the facts alleged by the requesting State as to the accused correspond, in French law, to the constitutive elements of the charges against Cesare Bonaglia.

[ . . . . ]

. . . In French law, an individual cannot be prosecuted for the charge of concealing another with whom he is charged as a perpetrator of the same infraction. In the instant case, article 61(2) of the Criminal Code cannot, therefore, be applied. In light of these circumstances, the principle of double criminality cannot be satisfied. Therefore, . . . [the court also must] give an unfavorable opinion to the extradition of Cesare Bonaglia for this second charge.

For these reasons the court is of the opinion that the request for extradition brought by the Italian Government against one Cesare Bonaglia should be unfavorably received. . . .



*In re Lopp*

February 6, 1976

Court of Appeal of Paris  
*Chambre d'Accusation*

Margalef Lopp, a Spanish national, is the object of an extradition request brought by the Spanish Government for the enforcement of a prison sentence issued on February 27, 1977 by the examining magistrate of Barcelona for the charge of fraud. . . . By notice of December 28, 1973 sent to the Bureau of Administrative Conventions and Consular Matters, the Minister of Foreign Affairs declared that Margalef Lopp (Juan) had obtained the status of refugee from the French Office for the Protection of Refugees. . . . [This Office] issued, on the same day, a refugee card to this alien who may be considered as being under its protection.

. . . In light of these circumstances, it is advisable to give an unfavorable opinion to the request for extradition.

For these reasons the court is of the opinion that the request for extradition brought by the Spanish Government against one Margalef Lopp should be refused.

*In re Apalategui-Ayerbe*

July 20, 1977

Court of Appeal of Aix-en-Provence  
*Chambre d'Accusation*  
[ . . . ]

[The court discusses, *inter alia*, the charges which have been brought against the accused, a Spanish national, by the Spanish Government in its extradition request. These charges include kidnapping, attempted murder, and murder.]

. . . The documents to substantiate the extradition request still have not been received; therefore, [the accused] . . . was not duly notified. . . . Whereupon the accused, through his attorneys, . . . requested the nullification of the procedure . . . and his immediate release under articles 3 and 7 of the Franco-Spanish Agreement of December 16, 1977 and articles 5 and 20 of the Law of March 10, 1927. [The arguments of the accused] . . . are two-fold; [he should be released] since the Spanish Government did not send the relevant documents through diplomatic channels and because he is a political militant who is being prosecuted for political crimes or offenses of a political character.

[ . . . ]

[A]ccording to the provisions of article 14 of the Law of March 10, 1927,

the accused can be released at any time during the proceeding. The substance of articles 13 and 14 of the same statute provides that the court has jurisdiction and the procedure is initiated only after notice has been given to the accused regarding the grounds upon which he has been arrested following the transmission of the extradition request to the French Government through diplomatic channels. In the instant case, these requirements have not been satisfied since the relevant documents have not as yet arrived. The matter, therefore, cannot be referred by the Public Prosecutor to the *Chambre d'Accusation*.

Accordingly, the judicial proceeding is not opened; any request for release according to the rules governing the matter is inadmissible. [And] . . ., within the framework of the administrative procedure of provisional arrest, the [request for] . . . release can be introduced only if, at the end . . . of one month following the provisional arrest, the interested person did not receive notification of the legal instrument of the litigation. . . . [I]n the instant case, the request based on article 7 of the Franco-Spanish Agreement of December 14, 1977 and article 20 of the Law of March 10, 1927 is consequently inadmissible since the relevant documents have not as yet been received.

. . . [W]ithin the framework of the administrative procedure of provisional arrest, a request for optional release could be brought before the court before the end of the one-month period only to safeguard personal rights and individual freedom which have been manifestly infringed, . . . for example, if the requirements for extradition are not met. . . . This is not the situation in the instant case; here, the charges (as they exist in their present form) brought against [the accused] are not necessarily either of a political character or connected to political offenses. The circumstances, as they have been described to the court, do not allow [us] to assert without any doubt that the request for extradition is issued with a political motive even if it is established that Apalategui Ayerbe is a Basque political militant belonging to an autonomist group which in his opinion would have assumed the responsibility of the offenses being charged to him.

For these reasons the court [denies] the request for release introduced by the interested person currently under a provisional arrest.

*In re Goicoechea Elorriaga*

April 6, 1979

Court of Appeal of Aix-en-Provence  
*Chambre d'Accusation*

The Court of Appeal of Aix-en-Provence . . . *Chambre d'Accusation*, ruling in open court according to the provisions of the Law of March 10, 1927,

has rendered the following judgment, given the request for extradition issued by the Spanish Government against one: Miguel Antonio Goicoechea Elorriaga born on July 3, 1956 in Baracaldo (District of Biscaye-Spain) . . . a Spanish national.

[ . . . . ]

. . . The Spanish Government requested the extradition of Goicoechea Elorriaga, a Spanish national, based upon a judgment of February 20, 1979 rendered by the magistrate of the examining tribunal of Madrid. . . . The magistrate issued . . . an arrest warrant on January 12, 1979 containing the charges of murder and armed robbery of a vehicle, by persons belonging to an organized and armed group (articles 260, 264, 406 of the Spanish Code of Criminal Law and article 13 of the Spanish Law of December 28, 1979).

It is alleged that the accused, on September 25, 1978: (1) In San Sebastian (Spain), in concert with five other persons, shot . . . (several military personnel) . . . ; (2) In Alza (Spain), stole . . . at gun point a vehicle in order to go to the place of the [foregoing] aggression.

The accused has recognized that the judgment and the arrest warrant apply to him . . . ; he, however, invokes the provisions of the Law of March 10, 1927. He claims to be a political refugee and asserts that, although he did not commit them, the acts contained in the arrest warrant have been committed for purely political purposes in the context of the Basque resistance to the [Spanish Government] and the Basque fight for political autonomy.

Article 3 of the Franco-Spanish Agreement of December 14, 1877 provides that anyone charged or convicted will not be extradited if the offense for which the extradition is sought is considered by the requested party as a political offense or an act connected to such an offense.

Article 5 of the Law of March 10, 1927 specifies that the crimes or offenses having a political character cannot give rise to extradition. However regrettable the application of these broad provisions can be especially in so far as they can allow perpetrators of murder, who take refuge in France, to escape all prosecution, it is nonetheless advisable to apply them literally as well as according to their spirit.

The substance of the arrest warrant reveals that Miguel Goicoechea Elorriaga committed the crimes of murder and aggravated robbery . . . as a member of a military commando of the E.T.A. [a Basque autonomy group]. . . . The record establishes that these offenses were committed within the context of the fight undertaken by a part of the Spanish Basque population with the aim of obtaining Basque political autonomy. Accordingly, the offenses must be considered as political offenses and cannot give rise to extradition.

For these reasons the Court renders an unfavorable opinion on the

request for the extradition of Miguel Goicoechea Elorriaga brought by the Spanish Government.

*In re Goicoechea Elorriaga*

May 15, 1979

Court of Appeal Aix-en-Provence  
*Chambre d'Accusation*

The Court of Appeal of Aix-en-Provence, . . . *Chambre d'Accusation*, ruling in open court according to the provisions of the Law of March 10, 1927, rendered the following judgment, in light of the request for extradition brought by the Spanish Government against Miguel Antonio Goicoechea Elorriaga born on July 3, 1956 in Baracaldo (District of Biscaye-Spain), . . . a Spanish national.

The Spanish Government requests the extradition of Miguel Goicoechea Elorriaga, a Spanish national, based upon an arrest warrant of April 11, 1979 issued by the examining magistrate of Madrid. The arrest warrant contains the charges of murder of three policemen, six thefts with violence, an attempted aggravated burglary, an aggravated burglary, possession of arms, carrying of arms, and using falsified documents. . . . Another arrest warrant dated April 17, 1975 issued by the same magistrate lists the charges of murder of a policeman, violence to three policeman, thefts with violence, aggravated burglary, illegal carrying of arms, possession of arms, munitions and explosives, information given to an organized armed group.

The accused is charged with being a member of the terrorist organization E.T.A. . . . [and] illegally crossing the border with falsified identity papers furnished by this organization. With other members of the E.T.A. the accused: (1) On June 27, 1978 in Renteria, robbed a cab driver at gun point and chained the driver to a tree after having taken his identity card. He then attacked a police vehicle with a machine gun . . . , killing a sergeant and seriously wounding three policemen. (2) On August 6, 1978 in San Sebastian, stole at gunpoint, the motorcycle of an employee of a savings bank. The proceeds of the robbery . . . were given to the E.T.A. organization in France. (3) In September 1978, with information given by the E.T.A. organization, planned an attack with explosives at the anticipated meeting place of the Guardia Civil. The incident did not take place because the meeting was cancelled and the explosives detonated during the arrest of two members of the group. (4) In September 1978, in Oyarzun, stole a vehicle at gunpoint. (5) In September 1978, in Zaraus, stole a vehicle at gunpoint and chained the driver to a tree using this vehicle during two months after having exchanged the license plates for French plates.

[ . . . . ]

[The court lists other similar charges (stealing vehicles, aggravated burglary, possession of arms, explosives, and falsified documents) apparently related to the financing and maintenance of the E.T.A. effort.]

[ . . . . ]

Finally, the group spied upon and obtained information about members of the national police and the Guardia Civil with the aim of committing criminal acts against them. This information was transmitted to the leaders of the E.T.A. in France.

At the hearing of May 9, 1979, Miguel Goicoechea Elorriaga recognized that [he was properly identified]. He, however, invoked the relevant provisions of the Law of March 10, 1927, claiming that the acts, which he denies having participated in, were committed with a purely political aim in the context of the struggle pursued by the Spanish Basque population against the [Spanish Government] to obtain Basque political autonomy.

Article 3 of the Franco-Spanish Agreement of December 14, 1877 provides that no one charged or condemned will be extradited if the requested party considers the offense for which the extradition is sought a political offense or an act connected to such an offense. Article 5 of the Law of March 10, 1927 provides that the crimes or offenses having a political character cannot give rise to extradition.

The documents describing the accusations and accompanying the arrest warrant concerning the interested person reveal that the offenses brought against him are related to acts committed by members of a commando unit of the E.T.A. terrorist organization. The record and the foregoing documents reveal that all the offenses, as serious as they are, have been perpetrated within the context of the struggle led by a part of the Spanish Basque population with the aim of obtaining its political autonomy. Therefore, these infractions must be considered as political crimes and offenses which cannot give rise to extradition.

For these reasons the Court renders an unfavorable opinion on the request for the extradition of Miguel Goicoechea Elorriaga brought by the Spanish Government.

*In re Apaolaza Azcargorta*

April 6, 1979

Court of Appeal of Aix-en-Provence  
*Chambre d'Accusation*

The Court of Appeal of Aix-en-Provence, . . . *Chambre d'Accusation* ruling according to the provisions of the Law of March 10, 1927 has rendered the following judgment, given the request for extradition made by the Spanish

Government against one Martin Apaolaza Azcargorta, born on January 17, 1947 in . . . Spain . . . , a Spanish national . . .

. . . The President of the court pronounced the following judgment at the hearing of April 6, 1975.

The Spanish Government requested the extradition of Apaolaza Azcargorta, a Spanish national, based upon a judgment of February 20, 1975 from the magistrate of the examining Tribunal of Madrid. . . . An arrest warrant of January 12, 1979 issued by the same magistrate contained charges of murder and armed robbery of a vehicle committed by persons belonging to an organized and armed group. (Articles 260, 264, 406 of the Spanish Code of Criminal Law and article 13 of the Spanish Law of December 28, 1978.)

It is alleged that the accused, on September 25, 1978: (1) in concert with five other persons voluntarily shot, with premeditation, members of the Guardia Civil in San Sebastian (Spain) . . . ; (2) In Alza (Spain) . . . , stole at gun point a vehicle which served to go to the place of the [foregoing] aggression.

The accused recognizes that the judgment and the arrest warrant apply to him . . . He, however, invokes the provisions of the Law of March 10, 1927, claiming to be a political refugee and stating that, although he did commit the acts, they . . . were committed for purely political objectives in the context of the struggle of the Basque population against the [Spanish Government] and the Basque fight for political autonomy. Article 3 of the Franco-Spanish Agreement of December 14, 1877 provides that anyone charged or condemned will not be extradited if the offense for which the extradition is sought is considered by the requested party as a political offense or an act connected to such an offense. Article 5 of the Law of March 10, 1927 specifies that the crimes or offenses having a political character cannot give rise to extradition. However regrettable the application of these broad provisions can be especially in so far as they can allow perpetrators of murder, who take refuge in France, to escape all prosecution, it is nonetheless advisable to apply these provisions literally as well as according to their spirit.

The substance of the arrest warrant reveals that Martin Apaolaza Azcargorta committed the crimes of murder and aggravated robbery . . . as a member of a military commando of the E.T.A. [a Basque militant autonomy group]. . . . The record establishes that these offenses were committed within the context of the struggle undertaken by a part of the Spanish Basque population with the aim of obtaining its political autonomy. Accordingly, the offenses must be considered as political offenses and cannot give rise to extradition.

For these reasons the Court renders an unfavorable opinion on the

request for the extradition of Martin Apaolaza Azcargorta brought by the Spanish Government.

*In re Apaolaza Ascargorta*

May 16, 1979

Court of Appeal of Aix-en-Provence  
*Chambre d'Accusation*

[In this second extradition request, the Spanish Government brought forth several new charges: aggravated robbery, possession of weapons, and murder. Most importantly, the arrest warrants upon which the second extradition request was based alleged that the accused attempted to destroy a nuclear plant by use of explosives. During this incident, conducted by an E.T.A. special commando group of which the accused was a member, some fourteen people were seriously injured and two workers at the plant were killed. The documents also listed charges which had been directed against Goicoechea Elorriaga as described in the Judgment of April 6, *supra*. Despite the additional charges and their serious character, the reasoning of the court remained the same; the opinion reproduces the language of the Goicoechea Elorriaga opinion *in haec verba*. ]

[ . . . . ]

Apaolaza Ascargorta recognizes . . . that the legal characterizations . . . apply to him. . . . He, however, invokes the provisions of the Law of March 10, 1927, claiming that the acts, which he denies having participated in, were committed for political reasons only and for a purely political aim in the context of the struggle pursued by the Spanish Basque population against the Spanish Government to obtain Basque autonomy.

Article 3 of the Franco-Spanish Agreement of December 14, 1877 provides that no one charged or condemned will be extradited if the offense for which the extradition is sought is considered by the requested party as a political offense or an act connected to such an offense. Article 5 of the Law of March 10, 1927 provides that the crimes or offenses having a political character cannot give rise to extradition.

The documents describing the accusations and accompanying the arrest warrant concerning the interested person reveal that the charges brought against him are related to acts committed by members of a commando unit of the terrorist organization ETA. The record and the foregoing documents reveal that all the offenses, as serious as they are, have been perpetrated within the context of the struggle led by a part of the Spanish Basque population with the aim of obtaining Basque political autonomy.

Therefore, these infractions must be considered as political crimes and offenses which cannot give rise to extradition.

[ . . . . ]

For these reasons, the Court renders an unfavorable opinion on the request for the extradition of Martin Apaolaza Azcargorta brought by the Spanish Government.

[ . . . . ]

*In re Viusa-Camps*

May 30, 1979

Court of Appeal of Paris  
*Chambre d'Accusation*

The Court of Appeal of Paris, *Chambre d'Accusation*, rendered the following judgment in open court according to the provisions of the Law of March 10, 1927 after public hearings on May 9, 1979. [The judgment concerned] the Spanish Government's extradition request for Manuel Viusa-Camps, a Spanish national. . . .

[ . . . . ]

On April 6, 1979, the Spanish authorities delivered, through diplomatic channels, a request for the extradition of Manuel Viusa-Camps, a Spanish national, . . . on the basis of an arrest warrant issued on March 16, 1973 (and not on May 16, 1976 as it is indicated erroneously on the official copy of the document . . .) by the examining Judge of the Tribunal of Madrid on charges of smuggling weapons, collaboration with armed groups, and complicity in assassinations. . . . These offenses are punished by article 264 of the Spanish Code of Criminal Law as modified by Law 82 of 1978, rendering the accused liable for a prison term of six years and one day to twelve years, and by article 406(3) of the same code, rendering the accused liable for a prison term of twelve to twenty years.

The documents transmitted by the requesting authorities also indicate that . . . the investigations reveal that Manuel Viusa-Camps, a painter, who usually resides in Paris, has a longstanding link to Catalan independence groups and, as a result, was in contact with . . . an exiled politician and . . . another man who established an organization advocating the use of violence to achieve its aims. . . . The accused travelled to Germany and bought arms which were later distributed to groups organized and trained by . . . the foregoing.

The document in question . . . concludes that these . . . facts constitute the elements of the crimes of smuggling weapons, collaboration with armed groups, and aiding and abetting murders. [These offenses are] defined and sanctioned by [the relevant provisions of Spanish law] . . . and the evidence is sufficient to establish grounds upon which to consider Manuel Viusa-Camps criminally liable. . . . [The court refers to



other documents transmitted by the Spanish Government which implicate the accused in a number of murders of prominent Spanish citizens].

...

Accordingly, the charges related above . . . serve as the basis for the Spanish Government's request for the extradition of the accused. . . . The French court does not have the authority to review the merits or application of the requesting State's legislation. On the contrary, the court must determine the legality of the request according to the provisions of the Agreement of December 14, 1877 and the French Law of March 10, 1927 as well as according to the principle of double criminality. . . . Therefore, the court must examine each of the three charges brought against Manuel Viusa-Camps.

#### *Smuggling of Arms*

. . . [The Spanish authorities] affirm that the accused . . . travelled to Germany and bought arms. The court may not, in its discretion, as the defense counsel urges it, call this fact into question . . . ; the court may only note that the requesting authorities fail to give any indication as to where in Germany these arms were bought, the identity of . . . the seller . . . , and the description of the arms purchased. The failure to furnish a more complete description of the activity, however, is without any legal consequence in the instant case, since the crime of smuggling arms is not included in the exhaustive enumeration of offenses for which extradition may be granted according to the substance of article 2 of the Agreement of December 14, 1877. Accordingly, the court deems that an unfavorable opinion must be given to the request for this . . . charge.

#### *Collaboration with Armed Groups*

Although this offense . . . does not appear . . . in the article 2 enumeration . . . , extradition nonetheless remains possible for the crime of associating with a criminal group—an offense listed in article 2(16). . . . The court, therefore, must ascertain, on the one hand, whether the requesting authorities intended to bring this charge against the accused and, on the other hand, whether—in French law—the facts as described by the requesting State constitute the crime in question. . . . [At this point in the opinion, the court goes through a fairly elaborate discussion and concludes: first, that the provisions of Spanish law relating to the new charge do not accommodate the facts as they have been related to the documents; and, second, that the facts do not establish the crime of association with a criminal organization as defined in French law. The court, therefore, also renders an unfavorable opinion on the basis of this second charge.]

*Complicity In Murder*

[In its analysis, the court notes that this charge is part of the enumerated offenses in the Agreement and that the domestic French and Spanish laws provide for penalties greater than the minimum required by the Agreement.] However, in order to satisfy the principle of double criminality, the court must ascertain whether in light of the documents transmitted by the requesting State in the instant case, the facts constitute the crime of complicity in murder under French law (article 60 of the Code of Criminal Law).

[At this juncture, the court focuses upon the contradictions between the various documents and the imprecision and insufficiency of the facts presented. On the basis of its analysis, the court concludes that, under French notions, there is not enough evidence to establish the complicity of the accused in the murders described and renders a third unfavorable opinion.]

[ . . . . ]

Therefore, the court need not consider . . . whether the offenses brought against . . . the accused have a political character . . . or whether . . . the request is made with a political aim.

For these reasons the court rules that the extradition request brought by the Spanish Government against Manuel Viusa-Camps should be unfavorably received.