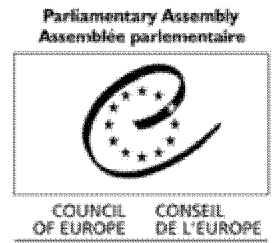


Parliamentary **Assembly** **Assemblée** parlementaire



Extradition of Sholam Weiss

Written Question No. 415 to the Chairperson of the Committee of Ministers

Doc. 9760

1 April 2003

Reply from the Committee of Ministers

adopted at the 833rd meeting of the Ministers' Deputies (26 March 2003)

I. Written Question No. 415 by Lord Russell-Johnston (Doc. 9578)

To ask the Chairperson of the Committee of Ministers,

1. If she is aware of the extradition of Sholam Weiss from Austria.
2. In particular, if she is aware that Mr Weiss, whose extradition was requested from Austria by the United States of America to face a sentence of 845 years imposed in Florida in 1999 for fraud offences, was extradited from Austria on the morning of Sunday 13 June 2002, although at that time:
 - a. There was a binding order issued by the Vienna *Verwaltungsgericht* (Administrative Court) on 24 May 2002 which prohibited Mr Weiss' extradition pending the examination of his submission to this Court that his extradition was unlawful because contrary to the European Convention on Human Rights and Austrian law;
 - b. There was an interim measures direction issued to Austria on 24 May 2002 by the United Nations Human Rights Committee through its Special Rapporteur

for Communications under Rule 86 of the Rules of the Human Rights Committee which prohibited Mr Weiss' extradition from Austria pending the Human Rights Committee's examination of the question whether the removal of Mr Weiss to the United States to face a sentence of 845 years without possibility of appeal or early release would expose him to irreparable harm;

3. If she is further aware that the Austrian Government has not informed the United Nations Human Rights Committee of the fact that Mr Weiss was extradited nor of how this action was or could be compatible with:

a. Austria's obligations under the International Covenant on Civil and Political Rights to provide effective domestic remedies for violations of human rights;

b. Austria's acceptance of the right for individuals to complain under the Optional Protocol procedure to the UN Human Rights Committee;

c. The specific interim measures order made in this case forbidding Mr Weiss' extradition;

d. The order made by the *Verwaltungsgericht* forbidding Mr Weiss' extradition while his administrative proceedings were pending which challenged his extradition to face sentence of 845 years without possibility of release nor right of appeal;

e. The rule of law; protected by the Statute of the Council of Europe.

4. Finally, If she is aware that, since his extradition from Austria to the United States, Mr Weiss has been imprisoned without possibility of appeal nor opportunity for early release and that his anticipated release date is 5 May (Europe Day) 2738.

II. Reply by the Chairperson of the Committee of Ministers

1. In reply to Lord Russell-Johnston's Written Question, the Chair provides the following information concerning the extradition of Mr Weiss from Austria to the United States of America, which is based in part on detailed information provided by the Austrian authorities.

2. It is correct that Mr Weiss' extradition took place despite a binding order by the Austrian *Verwaltungsgericht* (Administrative Court) and an interim measures direction issued to Austria by the United Nations Human Rights Committee to the effect that Mr Weiss should not be extradited pending the examination of the respective complaints he had brought before the aforementioned court and this Committee concerning his extradition.

3. However, there are other important additional facts to be borne in mind. First, on 8 February and 14 May 2002, i.e. prior to the extradition of Mr Weiss, the Austrian authorities received assurances from the competent authorities in the

United States of America that new proceedings would take place for fixing Mr Weiss' sentences in respect of all counts against him, and that Mr Weiss would be able to challenge these sentences before the US courts.

4. Secondly, it must also be pointed out that prior to lodging a complaint with the Austrian *Verwaltungsgericht*, Mr Weiss had unsuccessfully filed a constitutional complaint on the human rights aspects of his case with the *Verfassungsgerichtshof* (Austrian Constitutional Court).

5. Finally, from the point of view of the Council of Europe it is essential to note that Mr Weiss had also introduced an application before the European Court of Human Rights (No. 74511/01), alleging, *inter alia*, that his extradition to the United States would violate Article 3 of the Convention as he would have to serve an irreducible life sentence. While the Court had initially, on 10 May 2002, granted an interim measure under Rule 39 of the Rules of Court which the Austrian authorities complied with, it decided on 16 May 2002 not to prolong the application of this measure. A renewed request for an interim measure was denied by the Court on 23 May 2002. According to the Austrian authorities, they had submitted to the Court, *inter alia*, the aforementioned assurances of the United States authorities. Mr Weiss subsequently withdrew his application before the Court, which accordingly was struck out of its list of cases on 13 June 2002.

6. In view of these elements concerning the procedure before the European Court of Human Rights, in particular the Court's above-mentioned decisions concerning Rule 39, and bearing in mind the fact that any issues under the United Nations International Covenant on Civil and Political Rights raised by the extradition of Mr Weiss are currently being examined by the United Nations Human Rights Committee and that a decision is expected soon, the Chair considers that it is neither necessary nor appropriate to make any further comment on this case.