

N° 1739.

AUTRICHE ET ESTONIE

Convention d'extradition et d'assistance judiciaire en matière criminelle. Signée à Vienne, le 15 octobre 1926.

AUSTRIA AND ESTONIA

Convention regarding Extradition and Legal Assistance in Criminal Matters. Signed at Vienna, October 15, 1926.

¹ TRADUCTION. — TRANSLATION.No. 1739. — CONVENTION ² BETWEEN AUSTRIA AND ESTONIA RELATING TO EXTRADITION AND LEGAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT VIENNA, OCTOBER 15, 1926.

French official text communicated by the Estonian Minister for Foreign Affairs. The registration of this Convention took place June 5, 1928.

THE ESTONIAN and AUSTRIAN REPUBLICS, having resolved to conclude a Convention relating to extradition and legal assistance in criminal matters, have for this purpose appointed as their Plenipotentiaries :

THE GOVERNMENT OF THE ESTONIAN REPUBLIC :

M. Charles MENNING, Envoy Extraordinary and Minister Plenipotentiary ;

THE FEDERAL PRESIDENT OF THE AUSTRIAN REPUBLIC :

M. Rudolph RAMEK, Doctor of Laws, Federal Chancellor ;

Who, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

Article 1.

The Contracting Parties undertake to surrender to each other, under the circumstances and conditions defined in the present Convention, those persons who, being convicted or accused of any of the offences enumerated in Article 2 committed in the territory of one of the Contracting Parties, shall be found within the territory of the other Party.

Article 2.

Extradition shall be granted in respect of the acts enumerated below, provided that they constitute, under Estonian law, a crime or offence punishable with not less than one year's imprisonment, and under Austrian law a crime, such as :

- (1) Wilful murder, infanticide, abortion ;
- (2) Exposure of a person unable to protect himself, deliberate abandonment of such a person ;
- (3) Malicious wounding, malicious administering of poison or any other substance injurious to health ;

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Berlin, May 24, 1928.

- (4) Participation in a riot, resulting in death or grievous bodily harm ;
- (5) Deliberately depriving a person of his liberty ;
- (6) Substitution of children, false allegation of parenthood ;
- (7) Abduction of a minor, abduction of a person of full legal age without his or her consent ;
- (8) Bigamy, incest, indecent assault on a female under fourteen years of age, sexual intercourse with a person under the authority of the offender, rape, procuring ;
- (9) Larceny, receiving of stolen goods, embezzlement, peculation, extortion ;
- (10) Swindling ;
- (11) Fraudulent bankruptcy ;
- (12) Counterfeiting or debasing coinage, paper money, bills, bank notes, shares and other securities legally assimilated to paper money, and clipping coinage with intent to bring into circulation a false coinage or forged securities as genuine, or the clipped coinage as good ; or with intent bringing into circulation false coinage, forged securities or clipped coinage ;
- (13) Counterfeiting or tampering with Government marks, particularly fiscal and other revenue stamps ;
- (14) Forgery of entries in documents or of uttering a forged document or false affidavit ; destruction, removal or misplacement of landmarks ; damaging, destroying or concealing documents, unlawfully and with intent ;
- (15) Malicious acts causing fires, explosions, collapses or buildings or floods ;
- (16) Malicious acts causing the wreck or foundering of a vessel, malicious acts endangering the safety of shipping ;
- (17) Malicious acts endangering the safety of railway lines ;
- (18) Poisoning of springs, wells, aqueducts or water reservoirs or articles destined for public sale, or for the consumption or use of other persons, admixture of substances injurious to health, malicious circulation of poisoned articles or articles containing poisonous substances ;
- (19) Maliciously endangering the life, health or property of others by the use of explosive substances ;
- (20) Acts of collective violence committed in public against persons or property ;
- (21) Rescuing a person under arrest or, with intent, assisting in the rescue or escape of such person ;
- (22) Perjury by a party, by witness or by an expert, false statement equivalent to perjury, slanderous accusation ;

Extradition shall also be granted for attempts to commit the offences enumerated above or for complicity therein (incitement, aiding and abetting) if such attempt or complicity is punishable with the penalty specified in the first paragraph in conformity with the respective laws of the two Contracting Parties

Note : The list of offences in respect of which extradition may be granted may at any time be added to by arrangement between the Governments of the Contracting Parties, and the provisions of the present Convention shall apply to the offences added to the list as if they were contained in the original list.

Article 3.

Extradition shall not be granted in respect of political offences or acts accessory thereto except those which are primarily ordinary offences. The decision of this question shall in each case be determined by the State to which application is made.

Article 4.

In no case and in no circumstances shall the Contracting Parties be obliged to surrender their own nationals, whether nationals by birth or naturalisation.

Extradition shall not be granted for offences committed in the territory of the State to which application is made or on board a vessel flying its flag.

If the offence for which the application for extradition is made was committed outside the territory of the State making application, the application shall be granted only if the legislation of the State applied to provides in similar circumstances for prosecution in respect of an offence of the same kind committed outside its territory.

Article 5

Extradition shall not be granted :

(a) If, under the laws of the State to which application is made, exemption from prosecution or punishment has been acquired by lapse of time.

(b) If the person whose extradition is applied for has been sentenced in the State in question for the same offence or acquitted or granted remission of sentence.

Note : While the case is under investigation or if it has been dismissed, extradition may be refused.

Article 6.

If the person to be surrendered is being prosecuted or serving a sentence in the State applied to in respect of another offence, his extradition shall be deferred until the conclusion of the trial or until he has served his sentence or has been granted remission of sentence. Provisional extradition may, however, be granted provided that the person in question is handed over again when the State making application has concluded the enquiry or judicial proceedings.

Article 7.

No person who has been surrendered by one of the Contracting Parties to the other may be either prosecuted or punished in the latter State for any offence committed prior to his extradition other than that for which he was extradited, nor, except in the cases provided for in Article 10 paragraph 2, may he be surrendered to a third State unless the special authorisation, provided for under Article 9, has been obtained, or unless, having been finally acquitted or set at liberty on the full expiration of his sentence, or in consequence of the dismissal of the case, or on remission of the sentence, he has not left the country within a period of thirty days, being entirely free to do so, or unless, having left the country, he returns thither.

During the period of thirty days specified in the previous paragraph, the person surrendered shall in no way be prevented from leaving the country unless he commits a further offence.

Persons so surrendered may not be proceeded against for the offence for which they have been extradited in a Court which is declared competent to try cases of the kind referred to solely in view of this particular case, or in exceptional and special circumstances.

Article 8.

The application for extradition shall be made through the diplomatic channel. The application must be accompanied by the original or a certified copy, either of a sentence of condemnation or of a warrant of arrest issued by a Court or by a competent examining magistrate, stating the exact nature of the offence and the date when and the place where it was committed. It must also be accompanied by a copy of such penal provisions in force in the State making the requisition as are applicable to the offence, and whenever possible, by a description of the person claimed.

If the documents communicated are incomplete, or if further information of any kind is considered necessary, the State making the application may be asked to supply what is lacking.

A state making application shall in no case be required to produce proof of the guilt of the person claimed.

Article 9.

The request for the authorisation provided for in Article 7 shall be made through the diplomatic channel.

It shall indicate the nature of the offence, and the date when and the place where it was committed, or shall be accompanied by documents containing those particulars. If the object of the request is to bring the person concerned to trial, and if the offence is such that under the terms of the present Convention extradition cannot be refused, authorisation shall be granted.

Article 10.

If a person whose extradition is applied for by one of the Contracting Parties under the terms of the present Convention is also claimed by one or more other States, the State applied to shall decide which of the States making application shall be given precedence.

If in such a case the applications for extradition are in respect of different offences, the State applied to may, when granting extradition, attach thereto the condition that the person claimed shall, on the expiration of his sentence, be surrendered to another State.

Article 11.

Pending the formal application for extradition, the person concerned may be arrested provisionally. An application for arrest shall be made through the diplomatic channel. In urgent cases, however, and particularly if there is reason to apprehend the flight of the person concerned, the competent police authorities and Public Prosecutors of either Republic may forward this application direct to those of the other. The application shall indicate the offence of which the person in question is accused, the date when and the place where it was committed, and, whenever possible, the nationality and description of the person concerned. It shall further, in accordance with Article 8, give notice of any sentence passed on, or warrant of arrest issued against the person concerned.

If the person concerned has been provisionally arrested, as provided above, and if, within a period of thirty days from the date on which the State making application receives notice of arrest, the State applied to has not received a formal application through the diplomatic channel for the extradition of the person under detention, the latter may be set at liberty.

Article 12.

If extradition is granted, the State making application shall be bound to arrange for the surrender of the person claimed within a period of thirty days from the date on which it received notification that the extradition might be immediately effected. After the expiration of this period the person concerned may be set at liberty.

The extradition shall take place at a point on the frontier of the State to which application is made which shall be determined by the State making the application.

Article 13.

When a person has been arrested under the terms of the present Convention, any effects in his possession at the time of his arrest which may be important as evidence of the offence of which he is accused, or the production of which may be claimed by the civil party prejudiced, shall be seized, and if extradition is granted, handed over to the authorities of the State applying for extradition.

The State to which application is made may impose any conditions which it considers necessary with regard to such effects in order to safeguard the rights of third parties.

Article 14.

When a person surrendered to a third State by one of the Contracting Parties has to be sent through the territory of the other Party, his transport across its territory shall be authorised by the other Party, provided that the offence of which he is accused is one for which the Party applied to would be bound to grant extradition. Application for passage through the other Party's territory shall be made through the diplomatic channel and shall be accompanied either by the original or a certified copy of the extradition warrant or by the document containing the sentence or warrant in conformity with the terms of Article 8. The same provisions shall apply if a person is surrendered by a third State to one of the Contracting Parties. Such persons shall be conveyed under the escort of an official in the service of the State whose territory is being crossed.

Article 15.

If, in the case of a prosecution for a penal offence in respect of which extradition is admissible in virtue of the present Convention, a judicial authority of one of the Contracting Parties considers it necessary to take the evidence of witnesses residing in the territory of the other State, or to carry out any other investigation, a request to that effect shall be made in writing through the diplomatic channel, and shall be complied with so far as the laws of the State, in which the witness is to be heard or the investigation is to be carried out permit.

When possible, the State making application shall, if it so desire, be given due notice in advance of the time and place at which the measure applied for will be carried out.

Article 16.

If, in the case of a prosecution for a penal offence of the kind referred to or in respect of which extradition is admissible in virtue of the present Convention, it is considered necessary that articles or documents in the hands of the authorities of the other State which may serve as evidence of the offence should be produced, a request for that purpose shall be made through the diplomatic channel and shall be granted unless there are special reasons to the contrary in individual cases, the State to which the request is made having the right to make the surrender of such articles or documents conditional upon their subsequent restoration.

Article 17.

Expenses occasioned by the measures provided for in the present Convention shall be borne by the State in whose territory the measures are taken, with the exception of the expenses incurred in the passage through the territory of one of the Contracting Parties referred to in Article 14.

Article 18.

All documents produced in the cases provided for in the present Convention shall be drawn up in French or accompanied by a certified translation into French.

Article 19.

The present Convention shall be ratified in conformity with the laws of the Contracting Parties, and shall enter into force ten days after the exchange of ratifications. It shall remain in force until the expiration of a period of six months from the date of its denunciation by one of the Contracting Parties.

In faith whereof the Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done in duplicate at Vienna, October 15, 1926.

K. MENNING.
RAMEK.