

N° 3005.

BELGIQUE ET POLOGNE

Convention d'extradition et d'assistance judiciaire en matière pénale.
Signée à Bruxelles, le 13 mai 1931.

BELGIUM AND POLAND

Convention regarding Extradition
and Legal Assistance in Criminal
Matters. Signed at Brussels, May
13, 1931.

N^o 3005. — CONVENTION¹ D'EXTRADITION ET D'ASSISTANCE JUDICIAIRE EN MATIÈRE PÉNALE CONCLUE ENTRE LE ROYAUME DE BELGIQUE ET LA RÉPUBLIQUE DE POLOGNE. SIGNÉE A BRUXELLES, LE 13 MAI 1931.

Polish and French official texts communicated by the Chargé d'Affaires a. i. of the Polish Delegation accredited to the League of Nations and by the Belgian Minister for Foreign Affairs. The registration of this Convention took place July 23, 1932.

LE PRÉSIDENT DE LA RÉPUBLIQUE DE POLOGNE et SA MAJESTÉ LE ROI DES BELGES, désirant régler les rapports juridiques entre les deux États en ce qui concerne l'extradition et le transit des criminels, ainsi que l'assistance judiciaire en matière pénale, ont décidé de conclure à cet effet une convention et ont nommé comme plénipotentiaires :

LE PRÉSIDENT DE LA RÉPUBLIQUE DE POLOGNE :

Son Excellence M. Tadeusz JACKOWSKI, docteur ès sciences, envoyé extraordinaire et ministre plénipotentiaire près Sa Majesté le Roi des Belges ; et
M. Stefan SIECZKOWSKI, sous-secrétaire d'Etat au Ministère de la Justice ;

SA MAJESTÉ LE ROI DES BELGES :

M. Paul Emile JANSON, son ministre de la Justice ;

Lesquels, après avoir échangé leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions suivantes :

Article premier.

Les Hautes Parties contractantes s'engagent à se livrer réciproquement, sur demande, dans les conditions établies par la présente convention, les personnes qui, étant poursuivies ou condamnées par les tribunaux de l'Etat requérant pour un fait commis sur le territoire de cet Etat, seront trouvées sur le territoire de l'Etat requis.

L'extradition sera accordée dans les mêmes conditions, lorsque le fait aura été commis hors du territoire de l'Etat requérant et de l'Etat requis, si la législation de l'Etat requis autorise la poursuite d'une telle infraction, même commise à l'étranger.

Il ne sera livré, de part et d'autre, que des individus âgés de dix-huit ans accomplis au moment de l'infraction.

La Pologne ne livre ni les ressortissants polonais ni ceux de la Ville libre de Dantzig.

La Belgique ne livre pas les ressortissants belges.

Lorsque la présente convention se réfère à la législation de la Pologne, il faut comprendre par là une des législations en vigueur, ne fût-ce que dans une des provinces de cet Etat.

¹ The exchange of ratifications took place at Warsaw, June 15, 1932.

¹ TRADUCTION. — TRANSLATION.

No. 3005. — CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE POLISH REPUBLIC REGARDING EXTRADITION AND LEGAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT BRUSSELS, MAY 13, 1931.

THE PRESIDENT OF THE POLISH REPUBLIC and HIS MAJESTY THE KING OF THE BELGIANS, being desirous of regulating the legal relations between the two countries in regard to the extradition and conveyance of criminals and also legal assistance in criminal matters, have decided to conclude a Convention for this purpose, and have appointed as their Plenipotentiaries :

THE PRESIDENT OF THE POLISH REPUBLIC :

His Excellency M. Tadeusz JACKOWSKI, Doctor of Science, Envoy Extraordinary and Minister Plenipotentiary accredited to His Majesty the King of the Belgians, and M. Stefan SIECZKOWSKI, Under-Secretary of State at the Ministry of Justice ;

HIS MAJESTY THE KING OF THE BELGIANS :

M. Paul Emile JANSON, His Minister of Justice ;

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

Article 1.

The High Contracting Parties undertake, upon perquisition being made, to surrender to each other, under the conditions laid down in the present Convention, all persons who, being accused or convicted by the Courts of the State making application of an offence committed in the territory of that State shall be found within the territory of the State applied to.

Extradition shall be granted under the same conditions for an offence committed outside the territory of the State making application and that of the State applied to, provided the laws of the State applied to authorise prosecution in respect of such an offence even if committed abroad.

The two Parties shall only surrender persons who have completed their eighteenth year at the time of the offence.

Poland shall surrender neither Polish nationals nor citizens of the Free City of Danzig.

Belgium shall not surrender Belgian nationals.

Whenever in the present Convention reference is made to the laws of Poland, those words shall be understood to mean any legislation which is in force, even if only in one of the provinces of that State.

Article 2.

Extradition shall be granted only for the offences mentioned in the present Article and only in so far as, under the laws in force in both States, such offences are regarded as crimes or misdemeanours.

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.

The offences for which extradition shall be granted are as follows :

- (1) Assassination, murder, parricide, infanticide, poisoning ;
- (2) Wilful assault which has caused an apparently incurable disease, permanent incapacity for work, loss of the full use of an organ, serious mutilation or unintended death ;
- (3) Abortion ;
- (4) Rape ;
- (5) Indecent assault with violence or threats ;
Indecent assault even without violence or threats, provided that having regard to the sex and age of the person who was the object of the assault and to the other special circumstances of the case, such an assault is punishable as a crime under the laws of both High Contracting Parties ;
- (6) Offences committed against morals by encouraging, aiding or abetting, in order to gratify the passions of another, the debauching, corruption or prostitution of a minor of either sex ; procuring, enticing or leading away for immoral purposes a woman or girl of full age, when the act was committed by fraud or by violence, threats, abuse of authority or any other means of compulsion, in order to gratify the passions of another ; detention of a person in a disorderly house against her will ; coercion for immoral purposes of a person of full age ;
- (7) Abduction of minors ;
- (8) Abduction, receiving, removal, replacement or substitution of a child ;
- (9) Bigamy ;
- (10) Wilfully exposing or abandoning a child ;
- (11) Membership of a band with the object of committing offences against the lives or property of others ;
- (12) Larceny, robbery with violence (pillage) ;
- (13) Extortion ;
- (14) Theft, malversation, breach of trust ;
- (15) Swindling, fraud, criminal dishonesty in money matters ;
- (16) Fraudulent bankruptcy, fraud committed in bankruptcy ;
- (17) Threats to commit crimes against the persons or property of others ;
- (18) Offences by private persons against personal liberty and inviolability of domicile ;
- (19) Forgery of documents or falsification of public, commercial or private documents, falsification of telegraphic messages, use of forgeries ;
- (20) Forgery or fraudulent alteration of official documents issued by the Government or by a public authority, fraudulent use of documents so altered or forged ;
- (21) Coining of counterfeit money ; forging or alteration of certificates or coupons of the public debt, national or foreign banknotes, paper money or other public securities, seals, stamps, dies, marks of the State or public administrations ; uttering or fraudulent use of the above-mentioned altered or forged articles ;
- (22) False swearing ;
- (23) Perjury, false statements by experts or interpreters ; subornation of witnesses, experts or interpreters ;
- (24) Peculation and embezzlement by public officials ; bribery of public officials ;
- (25) Arson ;

(26) Wilful destruction of or interference with a railway or telegraphic or telephonic communications ;

(27) Deliberate acts endangering the security of railway traffic ;

(28) Wilful destruction or defacement of buildings or movable objects which is regarded as a crime or misdemeanour under the laws of both High Contracting Parties ;

(29) Abandonment of a merchant or fishing vessel by the captain, except in cases provided for by the laws of the two High Contracting Parties ;

(30) Stranding, loss or destruction by the captain or officers and crew ; appropriation of any ship or merchant or fishing vessel by the captain ; unnecessary jettisoning or destruction of all or part of the cargo, provisions or affects on board ; altering the course ; the unnecessary raising of money on the ship or on the ship's provisions or stores ; the pledging or sale of merchandise or food and the insertion in the accounts of fictitious damage or expenditure ; the sale of the ship without special authority, except in the event of unseaworthiness ; pilferage ; the adulteration of food or the alteration of merchandise effected on board by admixture of noxious substances ; attack upon or resistance to the captain by more than one-third of the crew, accompanied by violence or assault ; the refusal to obey orders issued by the captain or officer in command in the interests of the safety of the vessel or cargo, when accompanied by assault ; conspiracy against the safety, liberty or authority of the captain ; seizure of the vessel by crews or passengers by the use of fraud or violence against the captain ;

(31) Traffic in slaves ;

(32) Receiving of articles obtained by means of crimes or misdemeanours.

Extradition shall further be granted in cases of complicity in the offences enumerated in the present Article and also in cases of attempts to commit such offences, provided that the said complicity or attempts are punishable under the laws of both Parties.

The list of offences for which extradition may be granted may be modified or added to by mutual agreement, by declarations made by the two Governments.

Article 3.

Extradition shall not be granted :

(1) If, according to the law of the State applied to, the authorities of that State are competent to institute criminal proceedings and cannot waive such competence in favour of the authorities of the applicant State ;

(2) If, under the laws of the State applied to, and in Poland, under the laws in force in all the provinces, exemption from prosecution or punishment has been acquired by lapse of time at the time of extradition ;

(3) If, in the State applied to, judicial proceedings, in respect of the same offence, against the person whose extradition is requested have already been legally concluded ; the verdict of acquittal or the abandonment of the prosecution shall not prevent extradition if such acquittal or abandonment occurred solely because the offences were committed in the territory of a foreign State.

Article 4.

Extradition may be refused if the person whose extradition is requested is being proceeded against in the State applied to in respect of the offences which constitute the grounds of the requisition for extradition.

Article 5.

If the person claimed is being proceeded against or has been convicted in the State applied to for an offence other than that for which extradition is requested, his extradition may be deferred until the conclusion of the proceedings and, in the event of a conviction, until he shall have undergone his sentence or been pardoned.

Should the person claimed be proceeded against or kept in custody in the State applied to by reason of obligations contracted towards private persons, his extradition may take place, subject to the right of such persons to present their claims before the competent authority.

Article 6.

Extradition shall not be granted if the offence for which it is requested is regarded by the State applied to as a political offence or as an act connected with such an offence.

An attack made or attempted upon the person of a Head of State or the members of his family shall not be deemed to be a political offence or an act connected with a political offence when it constitutes assassination, murder or poisoning, or an attempt to commit or participation in such an offence.

Article 7.

If the extradition of a person is requested simultaneously by more than one State, the State applied to shall decide freely to which State extradition shall be granted.

Article 8.

The requisition for extradition, together with the documents in support thereof, must always be transmitted through the diplomatic channel.

Article 9.

The requisition for extradition must be accompanied either by the sentence of conviction or by warrant of arrest or any other document issued by the judicial authorities having the same force as the warrant of arrest.

These documents must specify precisely the offence for which extradition is requested and must contain a statement of the acts which constitute the grounds of the requisition, together with a copy of the criminal law provisions that are applicable. In the case of offences against the property of others, the documents shall state the amount of the damage inflicted or intended.

There shall be attached, if possible, a description of the person claimed or any other indications which may serve to establish his identity.

The documents mentioned in the present Article must be submitted either in the original or in certified true copies and must be legalised by the Ministry of Foreign Affairs of the applicant State or by a diplomatic or consular representative of that State.

To the documents mentioned in the present Article must be attached certified true translations in the official language of the applicant State, if the documents are not drawn up in that language. This provision shall also apply to any other correspondence concerning extradition.

The translations shall be legalised in the same way as the documents to which they relate.

The Polish language shall be deemed to be the official language in the case of Poland and the French language the official language in the case of Belgium.

Article 10.

In urgent cases, the person wanted for an offence mentioned in Article 2 shall be provisionally arrested on receipt of a request addressed in writing or by telegram to the Ministry of Foreign Affairs of the State applied to by the Ministry of Foreign Affairs of the applicant State or by its diplomatic representative, provided that such a request mentions the existence of one of the documents indicated in Article 9, paragraph 1.

Provisional arrest may also take place if the request by the competent authority of the applicant State has been made direct to a judicial or administrative authority of the State applied to.

Provisional arrest shall take place in the form established by the laws of the State applied to.

The applicant authority must be informed by telegram of the date and place of the provisional arrest.

The State applied to may release the person arrested if, within three weeks from the time at which he was arrested, none of the documents mentioned in Article 9, paragraph 1, has been notified to it.

Article 11.

In extradition cases all articles which were obtained as a result of the offence, or which may serve as proof, found in the possession of the person claimed at the time of his arrest or discovered later, shall, in virtue of a decision by the competent authorities of the State applied to, be seized and handed over to the applicant State.

These articles may be handed over, at the request of the applicant State, even if the extradition of the accused person, although admissible, cannot take place owing to his death or escape.

Nevertheless, any rights to the said articles which may have been acquired by third parties shall be reserved, and such articles must, if necessary, be restored to them free of charge after the conclusion of the criminal proceedings.

The State applied to may provisionally retain such articles if it requires them in connection with criminal proceedings.

Article 12.

The person to be surrendered shall be escorted to the port of the State applied to designated by the applicant Government, and shall be placed on board the vessel which is to convey him.

If the applicant State requests that the extradition should be effected by land, the State applied to shall hand over the person surrendered to a third State at the most convenient place on the common frontier, if it is assured that the accused person will be received there for conveyance in transit.

Should conveyance be effected by a vessel belonging to the Party applied to, that Party shall, at the request of the applicant Party, supply an armed escort to watch over the person surrendered until he is conveyed to a specified port in the applicant State or in a third State.

The expenses occasioned in the territory of the State applied to by the arrest, maintenance and conveyance of the person who is being proceeded against, together with the cost of consigning and transporting the articles handed over (Article 11), shall be borne by the Party applied to.

Article 13.

The person surrendered may not be proceeded against or punished for an offence committed prior to extradition and other than that for which extradition was granted, except in the following cases :

- (1) If the State which surrendered him consents to the additional proceedings ; such consent must be given if the conditions which, according to the present Convention, justify the requisition for extradition are fulfilled ;

(2) If, except in the case of political offences, the person surrendered consents thereto himself and makes a declaration which he signs at the same time as the judge or public prosecutor who receives the declaration ; a certified true copy of this declaration must be sent to the State applied to which surrendered the offender.

(3) If, within one month after the conclusion of the judicial proceedings or, in the event of a conviction, after the execution or remission of the penalty, he has failed to leave the territory of the State to which he was surrendered or if he returns thereto of his own free will.

Re-extradition to a third country shall be subject to the same rules.

Article 14.

Extradition in transit, through the territory of either Contracting Party, of a person surrendered to the other Party by a third State, shall be granted in cases in which extradition may be granted ; Articles 1, 2, 3, 4, 6, 8, 9 and 12 of the present Convention shall apply.

The cost of transit shall be borne by the applicant State.

Article 15.

If, in the prosecution of a criminal case in the territory of either State, the hearing of persons who happen to be in the territory of the other State, or any other act connected with the preliminary legal proceedings, is deemed to be necessary, a " commission rogatoire " shall be sent for this purpose to the judicial authorities of that State.

The State applied to may refuse to execute the " commission rogatoire " :

- (1) If it considers that such execution is such as to affect its sovereignty or safety ;
- (2) If the offence giving rise to the " commission rogatoire " is not punishable in the State applied to or constitutes either a purely military offence or, subject to the exception provided for in Article 6, paragraph 2, a political offence or an act connected with such an offence ;
- (3) If the accused person is a national of the country applied to and is not in the territory of the applicant State ;
- (4) If in the State applied to, the act of which the execution is requested does not come within the competence of the judicial authority ;
- (5) If the " commission rogatoire " is for the purpose of effecting a domiciliary search or a seizure in respect of an offence for which extradition may not be granted.

Article 16.

The service of judicial documents to a person in the territory of the State applied to shall be effected by the competent authority of that State, and the receipt certifying service shall be sent to the applicant State. Proof of service shall be furnished either by means of a receipt dated and signed by the addressee or by an attestation by the authority of the State applied to, stating the manner and the date of such service.

The State applied to may refuse to serve the summons if it contains any threat of punishment in the event of non-appearance, other than a mere warning that the criminal proceedings will take their course notwithstanding the absence of the person summoned.

Article 17.

If a request is made for the purpose, the State in which the witness or expert happens to be shall urge him to comply with the summons to appear in person before the judge or public prosecutor of the other State.

The summons itself shall contain a formal promise that expenses will be refunded. Travelling expenses and subsistence allowance, calculated from the time of his departure, shall be granted to the person summoned, in accordance with the scales and regulations in force in the country in which the hearing is to take place ; the judicial authorities of his place of residence may, at his request, advance to him the whole or part of the travelling expenses. This advance shall subsequently be refunded by the applicant State.

No witness or expert, whatever his nationality, who, when summoned, voluntarily appears before the authorities of the applicant State, may there be prosecuted or detained therein for offences or convictions prior to his appearance unless, when the hearing has been concluded, he fails by his own fault to leave the territory of the applicant State within a period of seven days.

Article 18.

If, in connection with criminal proceedings instituted in the territory of either Party, it is deemed necessary to obtain articles serving as proof of the crime or documents which are in the territory of the other Party, the Party applied to shall, unless there are special objections thereto, forward them to the applicant Party, subject to the obligation to return such articles and documents.

Article 19.

Requests for the service of documents and " commissions rogatoires " must specify exactly the names, surnames and nationality of the persons accused, their place of domicile or residence, the offences for which they are being proceeded against and the provisions of the criminal law which are applicable.

The request must be drawn up in the official language of the applicant State and must bear the official seal ; it need not be legalised. If the annexes are not drawn up in the official language of the applicant State or of the State applied to, they must be accompanied by a translation in one of those languages certified correct by the applicant authority or by a sworn translator.

The Polish language shall be deemed to be the official language in the case of Poland and the French language the official language in the case of Belgium.

Article 20.

The authority applied to shall discharge the duty requested of it in the manner provided for in its own laws, and shall in that connection apply the same measures of compulsion as in the execution of " commissions rogatoires " issued by its own authorities.

Nevertheless, if the applicant authority requests that a special procedure should be adopted the request shall be complied with, provided that such procedure is not prohibited by the laws of the State applied to.

The reply and the judicial documents drawn up in execution of the request shall be made out in the language of the authority applied to and if, according to the provisions in force, any language other than Polish or French has been used, a translation in one of these languages, certified correct by the authority applied to or by a sworn translator, shall be attached thereto.

Article 21.

Expenses incurred within the limits of the State applied to, in execution of Articles 15 to 20, shall be borne by that State and it shall not be entitled to request the refund thereof by the applicant State except in the case of advances made in respect of allowances to witnesses (Article 17, paragraph 2) and the cost of expert enquiries which have occupied more than one sitting.

Article 22.

The final sentences of conviction pronounced by the Courts of either State upon nationals of the other State in respect of all crimes and misdemeanours shall be transmitted to that State without special request and without charge, in the form of a bulletin or extract signed by the authority issuing such bulletin or extract.

Article 23.

All communications which are to be exchanged between the two Contracting States in application of the present Convention, other than those relating to requests for extradition or for provisional arrest, shall be effected by correspondence direct between the Ministries of Justice of the two States.

Article 24.

The present Convention shall not apply to the Colony of the Congo, or to the territories over which Belgium exercises a mandate of the League of Nations.

Article 25.

The present Convention, drawn up in the Polish and French languages, both texts being equally authentic, shall be ratified and the instruments of ratification shall be exchanged at Warsaw as soon as possible.

The present Convention shall be published in the manner provided for under the laws of the two Parties and shall enter into force thirty days after the exchange of the instruments of ratification.

Each of the Parties shall have the right to denounce the present Convention but it shall remain in force for six months after such denunciation.

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

Done in duplicate at Brussels, May 13, 1931.

(Signed) Tadeusz JACKOWSKI.

(Signed) Stefan SIECZKOWSKI.

(Signed) P. E. JANSON.