

N° 2959.

AUTRICHE ET BELGIQUE

Convention d'extradition et d'assistance judiciaire en matière pénale, visant spécialement le Congo belge et les territoires du Ruanda-Urundi. Signée à Vienne, le 26 janvier 1932.

AUSTRIA AND BELGIUM

Convention relating to Extradition and Legal Assistance in Criminal Matters as regards the Belgian Congo and the Territories of Ruanda-Urundi. Signed at Vienna, January 26, 1932.

¹ TRADUCTION. — TRANSLATION.

No. 2959. — CONVENTION² BETWEEN AUSTRIA AND BELGIUM RELATING TO EXTRADITION AND LEGAL ASSISTANCE IN CRIMINAL MATTERS AS REGARDS THE BELGIAN CONGO AND THE TERRITORIES OF RUANDA-URUNDI. SIGNED AT VIENNA, JANUARY 26, 1932.

French official text communicated by the Federal Chancellor of the Austrian Republic and the Belgian Minister for Foreign Affairs. The registration of this Convention took place May 10, 1932.

THE FEDERAL PRESIDENT OF THE AUSTRIAN REPUBLIC and HIS MAJESTY THE KING OF THE BELGIANS, having deemed it desirable, as regards the Belgian Congo and the territories of Ruanda-Urundi over which Belgium holds a mandate on behalf of the League of Nations, to conclude a Convention for the extradition of criminals and for judicial assistance in criminal matters, have appointed for this purpose as their Plenipotentiaries :

THE FEDERAL PRESIDENT OF THE AUSTRIAN REPUBLIC :

Dr. Johann SCHÖBER, Vice-Chancellor and Federal Minister for Foreign Affairs ;

HIS MAJESTY THE KING OF THE BELGIANS :

His Excellency M. LEGHAIT, Envoy Extraordinary and Minister Plenipotentiary to the Austrian Republic ;

Who, having communicated their full powers, found in good and due form, have agreed as follows :

Article 1.

The Governments of the High Contracting Parties undertake to deliver up to each other, on a request made by either to the other, such persons other than their own nationals as are being prosecuted for, or have been convicted by, the judicial authorities of either of the Contracting Parties, of one of the punishable offences specified in Article 2 hereunder, who are found in the territory of the other Party.

The term " Belgian nationals " shall be taken to mean Belgian citizens and nationals of the Belgian Congo. Nationals of Ruanda-Urundi shall be assimilated to Belgian nationals.

Extradition may only be granted for a punishable offence committed outside the territory of the State applied to, which under the laws of the applicant country and the country applied to may involve a sentence of one year's imprisonment or one of greater severity.

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 Brussels, April 4, 1932. Came into force May 10, 1932.

When the punishable offence giving rise to the request for extradition has been committed outside the territory of the applicant country, the request may be granted, provided that the law of the country applied to permit the prosecution of such offences even when committed abroad

Article 2.

The punishable offences for which extradition will be granted are as follows :

- (1) Wilful homicide, assassination, parricide, infanticide, poisoning ;
- (2) Threats to attack persons and property, if such threats are uttered in combination with an order or a condition and are extraditable under the laws of the High Contracting Parties ;
- (3) Deliberate assault or wounding causing an apparently incurable disease or permanent incapacity for work, loss or deprivation of the free use of a member or an organ, serious mutilation or unintended death ;
- (4) Abortion ;
- (5) The deliberate and culpable administering of poison or other substances capable of causing death or of seriously injuring health, even without intent to cause death ;
- (6) The abduction, receiving, removal, replacement or substitution of a child ;
- (7) The exposing or abandoning of a child ;
- (8) The abduction of minors ;
- (9) Rape ;
- (10) Indecent assault with violence ;
- (11) Indecent assault even though without violence, provided that in respect of the sex and age of the person assaulted and of the other circumstances peculiar to the case, such an assault is an extraditable offence under the laws of the High Contracting Parties ;
- (12) Offences committed against morals by encouraging, in order to gratify the passions of another, the debauching or corruption of minors of either sex, when the person guilty of such an offence is the father or mother, guardian or tutor of the person debauched ;
- (13) Offences committed by private persons against the liberty of the individual and the inviolability of the domicile ;
- (14) Bigamy ;
- (15) The counterfeiting or falsification of public bonds or banknotes or public or private securities ; the issuing or putting into circulation of such counterfeit or forged bonds, banknotes or securities ; falsification of documents, of telegrams and the use of such counterfeit, forged or falsified telegrams, bonds, notes or securities ;
- (16) Counterfeiting, including the counterfeiting and altering of currency, the uttering and putting into circulation of counterfeit and altered currency.
- (17) The counterfeiting or falsification of seals, dies, stamps and marks ; the use of such counterfeit or forged seals, dies, stamps and marks ; the improper use of genuine seals, dies, stamps and marks.
- (18) Perjury and false statements by experts or interpreters, the subornation of witnesses, experts or interpreters.
- (19) False swearing.
- (20) Malversation and embezzlement by public officials.

- (21) Bribery of public officials or arbitrators.
- (22) Arson.
- (23) Robbery with violence and theft.
- (24) Extortion.
- (25) Swindling and fraud.
- (26) Fraudulent conversion, embezzlement and breach of trust.
- (27) Fraudulent bankruptcy and fraud committed in bankruptcy.
- (28) Wilful interference with the safety of railway traffic.
- (29) Total or partial destruction of buildings, railways or telegraphic apparatus.
- (30) The destruction or defacement of tombs, monuments and works of art ; the destruction or defacement of public books and registers or of documents and other articles of public utility.
- (31) The destruction of, injury or damage, to goods or other movable property.
- (32) The destruction or devastation of crops, plants, trees or shoots.
- (33) The destruction of agricultural implements, the destruction or poisoning of cattle or other animals.
- (34) Deliberate and culpable offences resulting in the loss, stranding, destruction or damage of seagoing or other vessels.
- (35) The receiving of articles obtained by means of theft, fraudulent conversion, embezzlement, robbery with violence or extortion.

The foregoing classes of punishable offences shall include attempts to commit, and complicity or sharing in, such offences, when punishable under the laws of the High Contracting Parties.

Article 3.

It is expressly stipulated that an alien whose extradition has been granted may not in any case be proceeded against or punished for any political offence committed prior to his extradition, nor for any act connected with such an offence, unless after having been acquitted or discharged or, if convicted, after having served his sentence or secured its remission, he has for a period of one month had an opportunity of leaving the country or has subsequently returned thereto.

Article 4.

A request for extradition must always be made through the diplomatic channel.

Article 5.

Extradition shall be accorded on production, either in the original or in a certified copy, of the judgment or of the sentence or of the warrant of arrest issued by a judicial authority or of any other document having the same validity as such warrant.

These documents shall be issued in the forms prescribed in the applicant country and shall specify the nature of the offence and of the punishment therefor.

The documents shall, whenever possible, be accompanied by a description of the person claimed and, if necessary, by other particulars calculated to establish his identity.

Should there be any doubt as to whether the offence for which extradition is requested comes under the provisions of the present Convention, explanations shall be requested and, when these have been considered, the Government applied to shall decide whether the application shall be granted.

Article 6.

In urgent cases the provisional arrest of an individual prosecuted for one of the offences referred to in Article 2 of the present Convention shall be effected on notification by post or telegraph of the existence of a warrant of arrest, provided always that such notification is duly made through the diplomatic channel to the Belgian Minister for Foreign Affairs, if the accused has taken refuge in the Belgian Congo or in Ruanda-Urundi and to the Federal Chancellery, Department of Foreign Affairs of the Austrian Republic, at Vienna, if the accused has taken refuge in Austria.

This arrest shall be optional if the request issued by a Court or administrative authority of one of the Contracting Parties has been made direct to a judicial or administrative authority of the other Party.

The decision taken on this request shall be pronounced in accordance with the laws of the country whose authorities have been asked to grant extradition.

Article 7.

An alien provisionally arrested under the terms of the preceding Article shall be released if within three months from the day of his arrest he has not received one of the documents mentioned in Article 5 after transmission through the diplomatic channel.

Article 8.

The articles stolen or seized in the accused's possession, the tools and other objects used to commit the offence and any other material evidence shall, if the competent authority so decides, be handed over to the applicant Power along with the person claimed. These articles may be handed over even if the extradition already accorded cannot take place owing to the death or escape of the accused.

Any similar articles which the accused may have concealed or stored in the country granting extradition, and which are subsequently discovered, shall also be handed over.

Nevertheless, the rights which third parties may have acquired over these articles shall be reserved and such articles shall be returned to their titular owners free of charge after the trial is over.

Article 9.

If the person claimed is being proceeded against or has been convicted in the country applied to for an offence other than that for which extradition was requested, the extradition may be deferred until the conclusion of the proceedings and, in the event of a conviction, until he has served the sentence or the latter has been remitted.

Should he be proceeded against or detained in the same country by reason of obligations which he has contracted towards private persons, his extradition shall nevertheless take place, but such private persons may present their claims to the competent authority.

Article 10.

The person extradited may not be proceeded against or punished in the country to which extradition has been granted, or extradited to a third country for any offence committed prior

to his extradition and not covered by the present Convention, unless he has in both cases been given freedom to leave the above-mentioned country again within one month after sentence and, in case of conviction, after having served his sentence or having been pardoned, or unless he subsequently returns to that country.

He may not, moreover, be proceeded against or punished for an offence committed prior to his extradition and covered by the Convention other than that for which he has been extradited without the consent of the Government which surrendered him, and which, if it thinks fit, may require the production of one of the documents mentioned in Article 5 of the present Convention. The consent of this Government shall similarly be required for the extradition of the accused to a third country. Such consent, however, shall not be necessary if the accused has voluntarily asked to be brought to trial or to serve his sentences or if he has failed within the period above-mentioned to leave the territory of the country to which he was surrendered.

Article 11.

Extradition shall not take place :

(1) If the offence for which extradition is requested was committed outside the territories of the High Contracting Parties and a similar request is also made by the Government on whose territory the offence was committed ;

(2) If the person whose extradition is demanded has already been prosecuted and discharged, sentenced or acquitted in the country applied to for the offence on which the request is based, or if he is still being proceeded against for that offence ;

(3) If, subsequently to the acts alleged, the proceedings or the sentence, exemption from prosecution or punishment has been acquired by lapse of time under the laws of the country where the alien is residing.

Article 12.

If a person whose extradition has been granted to one of the High Contracting Parties by a third Government has to be conveyed across the territory of the other High Contracting Party, the latter shall not raise any objection unless the person in question is one of its nationals, provided always that the offence for which extradition is granted comes under Articles 1 and 2 of the present Convention and not under the provisions of Articles 3 and 11.

To secure agreement for the transport of a criminal in accordance with the present Article, it shall be sufficient for the request to be made through the diplomatic channel and for the original or a certified copy of one of the documents mentioned in Article 5 to be produced. The extradited person shall be escorted during transit by the officials of the country which authorised his passage across its territory.

Article 13.

When in any criminal case of a non-political character one of the Contracting Governments deems it necessary for witnesses domiciled in the other State to be heard or any other judicial enquiry to be held, a letter of request shall be sent for this purpose through the diplomatic channel and effect shall be given thereto, subject to the laws of the country on whose territory the witnesses are to be heard or the judicial enquiry is to take place.

Nevertheless in urgent cases the judicial authorities of both countries are authorised to send direct, by telegraph if necessary, to the competent authority of the other Party the requests for legal assistance referred to in paragraph 1 of this Article. Such requests and the documents relating to their execution shall always be sent back through the diplomatic channel.

Article 14.

If in a non-political criminal case the Government of either country deems it necessary that notification of a summons or of a judgment should be made to a person residing in the territory of the other State, the document, after being forwarded through the diplomatic channel, shall be served by a competent official on that person in accordance with the provisions in force in the country applied to, and the document certifying that notification has been effected shall be sent through the same channel to the applicant Government.

If the document has been forwarded in duplicate, the confirmation of service shall be endorsed on one of the copies or be annexed thereto.

Article 15.

Nothing in the foregoing provision shall preclude the sending of the judicial documents in question by the applicant authority to the person for whom they are intended by post.

Article 16.

If in a criminal case of a non-political nature the personal attendance of a witness is deemed necessary or expedient, the Government of the country in whose territory the witness resides shall request him to comply with the summons sent to him for this purpose by the authorities of the other State.

The costs entailed by the personal attendance of a witness shall always be borne by the applicant State and the summons sent for this purpose through the diplomatic channel shall specify the amount which will be paid to the witness for travelling and subsistence allowances, as well as the amount of the advance which the State applied to may, subject to repayment by the applicant State, make to the witness on account of the total amount.

This advance shall be paid as soon as the witness has declared his readiness to comply with the summons.

No witness of whatever nationality who, when summoned in one of the two countries, voluntarily attends in the Courts of the other country, may be prosecuted or detained in that country for previous criminal acts or convictions or on the ground of complicity in the acts forming the subject of the case in which he is a witness.

Article 17.

If in a criminal case of a non-political nature the Courts of one of the Contracting States deem it expedient or necessary to obtain articles serving as proof of the crime or documents which are in the hands of the authorities of the other State, application shall be made for them through the diplomatic channel.

The Government applied to shall grant the request unless there are special objections thereto. The applicant Government shall return such articles and documents as soon as possible.

Article 18.

The requests for legal assistance referred to in the present Convention, the documents attached thereto and those attesting the action taken thereon, as well as documents to be furnished in support of requests for extradition or for transit, shall be worded either in German or in French or be accompanied by a translation in one of these languages.

Article 19.

The two Governments reciprocally waive all claim to the refund of expenses incurred in their respective territories for the extradition of persons indicted, charged or convicted, for the handing over of the articles referred to in Article 8 of the present Convention, or for the execution of letters of request, the notification of judicial acts or the despatch or return of articles serving as proof of an offence and documents.

The costs of the conveyance and maintenance, while crossing intermediate territory, of persons whose extradition has been granted, shall be borne by the applicant Government.

The applicant Government shall similarly defray the costs of maintenance and transport across the territory of the other Contracting Party entailed by the conveyance in transit of a person whose extradition has been granted to the applicant Government by a third country.

The cost of conveyance by sea of a person whose extradition or transit has been granted to the Government of one of the High Contracting Parties shall always be borne by the applicant Government.

Article 20.

The present Convention shall be ratified, and the ratification shall be exchanged as soon as possible at Brussels. It shall come into force ten days after its publication in the forms prescribed by the laws of the High Contracting Parties and shall remain in force until the expiry of the period of one year from the day on which either Party shall give notice to terminate it.

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

Done in duplicate at Vienna, January 26, 1932.

(L. S.) SCHÖBER,

(L. S.) R. LEGHAIT.