

N° 3863.

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## ESTONIE ET HONGRIE

Convention d'extradition et d'assistance judiciaire en matière pénale, signée à Tallinn, le 8 août 1934, et échange de notes y relatif de la même date.

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## ESTONIA AND HUNGARY

Convention relating to Extradition and Judicial Assistance in Criminal Matters, signed at Tallinn, August 8th, 1934, and Exchange of Notes relating thereto of the same Date.

<sup>1</sup> TRADUCTION. — TRANSLATION.

No. 3863. — CONVENTION <sup>2</sup> BETWEEN THE REPUBLIC OF ESTONIA AND THE KINGDOM OF HUNGARY RELATING TO EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT TALLINN, AUGUST 8TH, 1934.

*French official text communicated by the Estonian Minister for Foreign Affairs and by the Head of the Royal Hungarian Delegation to the League of Nations. The registration of this Convention took place March 28th, 1936.*

HIS SERENE HIGHNESS THE REGENT OF THE KINGDOM OF HUNGARY  
and

THE PRESIDENT OF THE REPUBLIC OF ESTONIA,

Wishing to regulate the legal relations between the two States with regard to the extradition and conveyance of criminals and to the question of judicial assistance in criminal matters, have decided to conclude a Convention to this effect, and have appointed as their Plenipotentiaries :

HIS SERENE HIGHNESS THE REGENT OF THE KINGDOM OF HUNGARY :

His Excellency Monsieur Alexander KISCH DE NEMESKÉR, Envoy Extraordinary and Minister Plenipotentiary of Hungary at Tallinn ;

THE PRESIDENT OF THE REPUBLIC OF ESTONIA :

His Excellency Monsieur Julius SELJAMAA, Minister for Foreign Affairs ;

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

CHAPTER I.

*Article 1.*

EXTRADITION.

1. The Contracting Parties undertake to surrender to each other, upon application being made, persons within the territory of the one Party who are being proceeded against or who have been sentenced by the ordinary courts of the other Party for any offence :

(a) If the offence is punishable under the laws of both States by imprisonment for at least one year, or if the person claimed has been sentenced for such an offence to more than six months' imprisonment ;

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

<sup>1</sup> Translated by the Secretariat of the League of Nations, for information.

<sup>2</sup> The exchange of ratifications took place at Budapest, August 23rd, 1935. Came into force November 23rd, 1935.

(b) If the offence was committed outside the territory of the State applied to ;  
 (c) If the law of the State applied to does not require the offence to be dealt with in its own courts.

2. Extradition shall also be granted in the case of attempts to commit the said offences, or preparatory acts, or aiding and abetting of offenders, when these acts are punishable under the laws of both Contracting Parties.

#### Article 2.

The Contracting Parties shall not surrender their own nationals.

#### Article 3.

##### NON-EXTRADITABLE OFFENCES.

Extradition shall not be granted :

(a) For political offences ;

It shall be granted even in cases where the offender alleges a political aim or motive if the act for which extradition is demanded constitutes primarily an ordinary offence. The State applied to shall be free to decide, according to the relevant data in each individual case, the nature of the offence ; it may request the applicant State to produce all the necessary information and evidence concerning the actual facts.

It is understood that an offence committed or attempted against the life or person of a Head of State or the members of his family shall not be considered as a political offence.

(b) For purely military offences ;

(c) For Press offences in the strict sense of the term ;

(d) For offences in connection with Customs, fiscal and other financial laws ;

(e) For offences concerning which action can only be taken at the instance of the injured party, if it is not proved that the said party has taken action, or if he has abandoned his intention of doing so ;

(f) If exemption from prosecution or punishment has been acquired through lapse of time under the laws of either Contracting Party or those of the State where the offence was committed, before the accused has been arrested or summoned to appear, or if he cannot be prosecuted or the sentence enforced for other legal reasons ;

(g) If the person claimed is being proceeded against for the same offence in the country applied to, or if he has already been discharged or pardoned or sentenced or acquitted for the same offence, provided that the laws of that country do not allow of the re-opening of criminal proceedings if new information comes to light ;

(h) For offences which constitute contraventions under the laws of at least one of the Contracting Parties.

#### Article 4.

##### REQUISITION FOR EXTRADITION.

1. The requisition for extradition shall be made through diplomatic channels. It shall be accompanied by the original or an authentic copy of the sentence passed on the person claimed, or by a warrant of arrest issued by a court or other competent authority, or by an indictment. These documents shall indicate briefly the offence with which he is charged, its exact nature and denomination, and shall be accompanied by a certified true copy of the criminal law of the applicant State concerning this offence, and an indication of the corresponding penalty.

2. In the case of offences against property, the amount of the damage actually caused, or, in appropriate cases, of that which the criminal wished to cause, shall be stated.

3. Either the originals of these documents or copies legalised by the court or by some other competent authority of the applicant State shall be forwarded with the requisition. In so far as is possible, the description of the person claimed, his photograph, or other particulars which might serve to establish his identity, shall also be forwarded therewith.

*Article 5.*

LANGUAGE TO BE EMPLOYED.

The documents mentioned in the preceding Article shall be drawn up in the official language of the applicant State, according to the form prescribed by its laws, and shall bear the official seal. They shall be accompanied by translations either in the official language of the State applied to or in French, or in another language agreed upon between the Contracting States, which has been made or certified correct by the competent authority or by a sworn or official interpreter of the applicant State, whose signature and whose seal they shall bear.

*Article 6.*

ADDITIONAL EXPLANATIONS.

If any doubt exists as to whether the offence in respect of which proceedings have been instituted is covered by the present Convention, explanations shall be asked for from the applicant State, and extradition shall only be granted if the explanations forthcoming remove all uncertainty.

*Article 7.*

MEASURES TO ENSURE EXTRADITION.

Immediately upon the arrival of the requisition for extradition, accompanied by the documents specified in Articles 4 and 5, the State applied to shall take all measures necessary to secure the person claimed and to prevent his escape, provided that his extradition is not *prima facie* inadmissible.

*Article 8.*

PROVISIONAL ARREST.

1. In urgent cases, the person claimed may be provisionally detained, even before the requisition for extradition has been submitted, on receipt of a notification by letter or telegram, provided that mention is made of a warrant for arrest, or a sentence, and also that the nature of the offence is stated. This notification may be sent direct to the competent authorities of the State applied to by the court or competent authorities of the applicant State.

2. In the absence of such notification, the competent authorities of either of the Contracting Parties may place under provisional arrest any person discovered in their territory whose description has been given by the authorities of the other Party or who has been entered as wanted by the police in their respective reports or registers.

3. The authorities who have made an arrest in accordance with paragraphs 1 and 2 shall at once inform the authorities who desired the arrest, or those by whom the offender was being sought in accordance with the notification published in the police reports or registers, and shall specify the place of detention.

4. If, within fifteen days from the sending of this information in accordance with the above provisions, the other Contracting Party has given no indication that the extradition of the arrested person will be applied for, he may be released.

*Article 9.*

1. If the requisition for extradition, accompanied by the documents in support enumerated in Articles 4 and 5, has not been received within a period of six weeks from the day when the announcement of the arrest required by paragraph 3 of the preceding Article was sent out, the arrested person may be released.

2. In cases where additional explanations have been asked for in accordance with Article 6, the arrested person may also be released if these explanations have not been given to the State applied to within the appropriate period which it specified. This period may be prolonged if a request is made for this purpose, accompanied by a statement of reasons, provided that the total period of provisional arrest does not exceed two months.

*Article 10.*

## REQUISITIONS FOR EXTRADITION SUBMITTED BY MORE THAN ONE STATE.

1. If extradition is applied for by a third State or by several other States, the Party applied to may give preference to the requisition for extradition put forward by the third State or by one of the other States if it holds that this preference is more in accordance with the interests of justice.

2. These provisions shall in no way prejudice former undertakings assumed by one of the Contracting States with regard to other States.

*Article 11.*

## POSTPONEMENT OF EXTRADITION.

1. If a person who is claimed is being proceeded against or has been sentenced in the territory of the State applied to for an offence other than that which led to the requisition for extradition, or if he is detained there for other reasons, his extradition may be postponed until the proceedings have been terminated, or, in the event of his receiving a sentence, until he has served the same or been pardoned, or until his detention has come to an end on other grounds.

2. This postponement shall not prevent a decision being taken at once with regard to his extradition.

*Article 12.*

## TEMPORARY SURRENDER OF THE PERSON CLAIMED.

If, however, the postponement of extradition mentioned in paragraph 1 of Article 11 could, under the laws of the applicant State, cause the proceedings to lapse through limitation or otherwise seriously hinder them, the person claimed may be temporarily surrendered, provided that there are no special reasons to the contrary and that the person surrendered is returned as soon as the preliminary investigations in the applicant State, for which the individual was temporarily required, are terminated.

*Article 13.*

## LIMITS TO THE RIGHT OF EXTRADITION.

1. A person who has been surrendered may not be prosecuted or sentenced in the State to which extradition has been granted, or surrendered to a third country, for offences (committed before his extradition) other than that for which his extradition was granted.

2. For such offences committed before his extradition, the person surrendered can only be prosecuted, punished or surrendered to a third country :

(a) If the State which granted extradition subsequently consents. This consent cannot be withheld if extradition for the offences concerned is allowed by the present

Convention. The State which surrendered the offender may require this consent to be requested in the form prescribed for requisitions for extradition, supported by the documents enumerated in Articles 4 and 5 ;

(*b*) If, despite perfect freedom of movement, the said person has not, within a period of thirty days, left the territory of the State to which he was surrendered after being tried therein, and, in the event of his receiving a sentence, after having served the same or having been pardoned, or if he subsequently returns there of his own free will ;

(*c*) If the person surrendered requests of his own accord to be tried or to serve his sentence.

Paragraph (*c*) shall not apply to the offences enumerated in Article 3.

3. The State to which consent for extradition was granted in accordance with paragraph 2 (*a*) shall inform the other State, if requested to do so, of the final result of the proceedings, by forwarding to it a legalised copy of the verdict.

#### Article 14.

##### CONVEYANCE OF CRIMINALS IN TRANSIT.

1. If the extradition of a criminal takes place between one of the Contracting Parties and a third State, the other Party shall grant permission, if requested, for him to be conveyed across its territory.

2. The provisions relating to the granting of extradition shall also apply in the case of this transit.

3. Transit shall be carried out by representatives of the Party applied to, under such conditions and in such a manner as the latter shall think fit.

4. If, within three months from the day when information that extradition has been granted reaches the applicant State, the latter has not produced proof of consent by the State across whose territory the person claimed must be conveyed, the consent previously given for extradition shall be deemed null and void.

## CHAPTER II.

#### Article 15.

##### JUDICIAL ASSISTANCE IN CRIMINAL MATTERS. GENERAL PROVISIONS.

1. In criminal matters the Contracting Parties shall render one another judicial assistance. In particular, they shall serve persons in their territory with notice of criminal proceedings, shall carry out preliminary investigations, such as the hearing of witnesses and experts, the legal constat, searches and seizures of objects, and shall forward to one another writs and material exhibits.

2. Judicial assistance in criminal matters may be refused :

(*a*) If applied for in connection with the prosecution or the sentencing of a national of the Party applied to who is in the territory of that Party ;

(*b*) If the summoning of a witness or an expert entails legal consequences in the event of his non-appearance, such as a penalty, or costs, or a warrant to bring him before the court or a warrant for his arrest ;

(*c*) If asked for in connection with one of the offences enumerated in points (*a*) to (*d*) and (*g*) of Article 3 of this Convention ;

(*d*) If the laws of the Party applied to do not allow of it.

Should the Party to which application is made refuse letters of request or the service of a document, it shall inform the other Party without delay, and state its reasons.

3. Applications for judicial assistance shall be transmitted through diplomatic channels. In extremely urgent cases in which any loss of time might compromise the result of the criminal proceedings, the prosecuting authorities may communicate direct with the competent authorities of the Party applied to, either to obtain the arrest of a criminal, or to establish his identity, or to ascertain the result of a domiciliary visit or to ensure the seizure of objects connected with the offence and material exhibits.

Should the authorities applied to not possess the necessary powers, they shall transmit the letters of request through the official channel to the competent authorities of their State, at the same time informing the applicant authorities that they have done so.

The provisions of Article 5 concerning translation shall also hold good with regard to this application and the accompanying documents.

4. In carrying out applications for judicial assistance in criminal matters, care shall be taken to observe the laws of the State in whose territory the requested proceedings are to take place. The official reports of these latter shall not be translated into the official language of the applicant State.

#### *Article 16.*

##### SUMMONING AND APPEARANCE OF PERSONS WHO ARE IN THE TERRITORY OF THE OTHER CONTRACTING STATE.

1. If, in a criminal case pending before the courts of one of the Contracting States, the appearance of a witness or an expert who is in the territory of the other Contracting State is thought necessary or desirable, the courts shall summon him through diplomatic channels. The competent authorities of the State applied to shall inform him of the summons, while leaving him free to comply or not.

2. Costs incurred by the appearance of a witness or expert shall be borne by the applicant State. The summons shall indicate the sum to be allotted to the witness or expert as travelling and subsistence allowances, and the amount of the advance which the State applied to can make to him, as soon as the person summoned to appear states his readiness to comply, this sum to be repaid by the applicant State.

3. No witness or expert, of whatever nationality, who may be in one or other of the Contracting States and who appears of his own free will, after being summoned as described in paragraph 1, before the courts of the other Party may be prosecuted or detained there for previous criminal acts or sentences, or for having been concerned in the acts leading up to the trial in which he appears.

4. Nevertheless, such persons will cease to enjoy this protection if they do not voluntarily leave the territory of the applicant State within fifteen days from the time when their presence in the courts is no longer necessary.

5. If the witness summoned in accordance with paragraph 1 is in custody in the territory of the State applied to, his appearance may be requested, provided that an undertaking is given to send him back as soon as possible. An application of this kind can only be refused if special considerations obtain, and in particular if the person summoned, being then in custody, expressly objects to complying.

6. In the same manner, and in accordance with the above conditions, the right of conveyance shall be granted both ways across the territory of one of the Contracting Parties in respect of a person in custody in a third country, whom the other Contracting Party desires to bring into the presence of an individual undergoing trial, or to hear as a witness.

*Article 17.*

## DELIVERY OF MATERIAL EXHIBITS.

1. The authorities of the two Contracting Parties shall deliver to one another, on request being made, articles which an accused man has obtained by his offence or those which might serve as material exhibits, this provision to apply even in cases where they would be liable to seizure or confiscation.

2. If the articles are in the possession of the accused at the time of his extradition or transit, they shall as far as possible be delivered at the same time as his extradition or transit takes place. They shall be delivered even in cases where extradition cannot be granted or carried out as a result of the death or escape of the accused. All articles indicated in paragraph 1 which the accused may have hidden in the country applied to and which may be afterwards discovered shall be included.

3. Rights acquired by third parties over the articles in question shall nevertheless be respected, and the articles shall in this case be returned to the State applied to, free of charge, as soon as possible after the proceedings.

4. The State to which application has been made for the delivery of articles indicated in paragraphs 1 and 2 may retain them provisionally if it thinks them necessary for proceedings at criminal law. When delivering articles in this way, it may require their return for the same purpose, and in this case it will undertake, in its turn, to send them back as soon as it can do so.

*Article 18.*

## COMMUNICATION OF SENTENCES AND EXTRACTS FROM LEGAL RECORDS.

1. The Contracting Parties undertake to communicate to one another through the diplomatic channel at the end of each year sentences which have become *res judicata*, or extracts from all final sentences, including suspended sentences, passed by their legal authorities on nationals of the other Party, in so far as these are entered, according to the laws in force, in their legal records or registers of the courts. The offences and contraventions mentioned in paragraphs (a) to (d) and (h) of Article 3 shall be excluded from these communications.

2. They shall also communicate to one another subsequent decisions concerning the said sentences which have been entered in the legal records or registers of the courts.

3. The authorities of one of the Contracting Parties entrusted with keeping the legal records or registers of the courts shall supply free of charge to the authorities of the other Party, upon application being made through the diplomatic channel, information with regard to particular cases based on legal records or registers of the courts.

*Article 19.*

## COSTS OF JUDICIAL ASSISTANCE IN CRIMINAL MATTERS.

1. Costs arising out of requisitions for extradition or any other form of judicial assistance in criminal matters shall be borne by the Party in whose territory they have been incurred.

2. An exception shall be made, in addition to costs mentioned in paragraphs 2, 5 and 6 of Article 16, in the case of allowances paid for expert reports of any kind, and in that of costs arising out of the summoning or appearance of persons who are in custody in the territory of the State applied to. These expenses shall be repaid by the applicant State. Similarly, the applicant State shall bear expenses incurred through the temporary extradition and return of persons mentioned in Article 12, in addition to costs incurred by the transit and maintenance while in intermediate territories of persons whose extradition or temporary surrender has been granted.



## CHAPTER III.

*Article 20.*

## FINAL PROVISIONS.

1. The present Convention, drawn up in French, shall be ratified and the instruments of ratification shall be exchanged as soon as possible in Budapest.

2. It shall come into force three months after the instruments of ratification have been exchanged, and shall remain in force until one of the Contracting Parties gives the other six months' notice of its intention to denounce the same.

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

Done in duplicate at Tallinn, this 8th day of August, 1934.

(Seal) Alexandre KISCH DE NEMESKÉR, *m. p.*

(Seal) Jul. SELJAMAA, *m. p.*

## EXCHANGE OF NOTES.

## I.

TALLINN, *August 8th*, 1934.

YOUR EXCELLENCY,

On proceeding to-day to the signature of the Convention relating to Extradition and Judicial Assistance in Criminal Matters between the Kingdom of Hungary and the Republic of Estonia, I have the honour on behalf of my Government to propose to Your Excellency that German should be accepted as the language whose use is agreed upon between the Contracting States for the translations referred to in Articles 5 and 15 of the Convention.

I beg Your Excellency to accept the assurance of my highest consideration.

KISCH, *m. p.*

His Excellency  
Monsieur J. Seljamaa,  
Minister for Foreign Affairs,  
Tallinn.

## II.

TALLINN, *August 8th*, 1934.

MONSIEUR LE MINISTRE,

In your letter of to-day's date, you suggested that German should be accepted as the language whose use is agreed upon between Estonia and Hungary for the translations referred to in Articles 5 and 15 of the Convention between our two countries relating to Extradition and Judicial Assistance in Criminal Matters which we have just signed.

In taking note of the above request, I have the honour to inform you that the Estonian Government accepts the proposal of the Government of Hungary.

I beg you to accept the assurance of my highest consideration.

SELJAMAA, *m. p.*

His Excellency  
Monsieur A. Kisch de Nemeskér,  
Envoy Extraordinary and  
Minister Plenipotentiary of Hungary,  
Tallinn.

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