

N° 4295.

ESTONIE ET ITALIE

Traité d'extradition et d'assistance
judiciaire en matière pénale. Signé
à Rome, le 10 août 1935.

ESTONIA AND ITALY

Treaty regarding Extradition and
Judicial Assistance in Criminal
Matters. Signed at Rome, Au-
gust 10th, 1935.

¹ TRADUCTION. — TRANSLATION.

No. 4295. — TREATY ² BETWEEN THE REPUBLIC OF ESTONIA AND THE KINGDOM OF ITALY REGARDING EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT ROME, AUGUST 10TH, 1935.

French official text communicated by the Estonian Minister for Foreign Affairs. The registration of this Treaty took place March 1st, 1938.

THE PRESIDENT OF THE REPUBLIC OF ESTONIA and HIS MAJESTY THE KING OF ITALY, being desirous of agreeing upon rules for the extradition of criminals and judicial assistance in criminal matters and of concluding a Treaty for this purpose, have appointed as their Plenipotentiaries :

THE PRESIDENT OF THE REPUBLIC OF ESTONIA :

M. Taavet JANSON, Acting Chargé d'Affaires of the Republic of Estonia in Rome ;

HIS MAJESTY THE KING OF ITALY :

H. E. Benito MUSSOLINI, Head of the Government, Minister for Foreign Affairs ;

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

CHAPTER I.

EXTRADITION.

Article 1.

The High Contracting Parties undertake to deliver up to each other, on requisition being made, those persons who, being in the territory of the Party applied to, are being proceeded against, or have been convicted, by the judicial authorities of the Party making the requisition as principals or accessories, in respect of any of the offences mentioned in the following Article.

They may also deliver up to each other, on requisition being made, persons who are being proceeded against, or have been convicted, in respect of offences other than those mentioned in the following Article.

Article 2.

The obligation laid down in the preceding Article shall apply to offences which, under the laws of the two States — even should such laws be operative only in certain parts of their territory

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 Tallinn, November 29th, 1937. Came into force March 1st, 1938.

— are punishable by detention for a minimum period of one year or by a more serious penalty, or if the person claimed has been sentenced for the same offence to a penalty involving loss of liberty for a minimum period of six months or to a more serious penalty.

Extradition shall also be granted for attempts to commit offences, subject always to the same conditions as those laid down in the previous paragraph.

Article 3.

The obligation laid down in Article 1 shall also extend to the extradition of nationals of the Party making the requisition to whom preventive measures involving loss of personal liberty are applied by order of the judicial authorities, as habitual criminals, professional criminals, or persons with criminal proclivities.

Article 4.

Extradition shall not be granted :

- (a) For offences which are only punishable under the Press laws ;
- (b) For purely military offences when the acts concerned are punishable only under military law ;
- (c) For political offences or acts connected with such offences, except where the political offence constitutes essentially an attempt on the life or safety of individuals, or an attempt on property carried out by methods which constitute a danger to public safety ;
- (d) For offences under Customs, fiscal and other financial laws.

In the cases mentioned in the present Article, the decision as to the nature of the acts shall rest exclusively with the authorities of the State applied to.

Article 5.

Extradition may be refused :

- (a) If, under the laws of the State applied to, the authorities of that State are competent to try the offence ;
- (b) If the offence was committed in the territory of a third State and the laws of the Party applied to do not allow of prosecution for such an offence when committed abroad ;
- (c) If, under the laws of the Party applied to, criminal proceedings are barred, or the sentence has become unenforceable, through lapse of time before the requisition for extradition is received ;
- (d) If the offences are such that proceedings can only be instituted on the complaint of the injured party and may be discontinued by his withdrawal.

Should the information contained in the documents produced be insufficient for a decision to be taken under the laws of the Party applied to, it shall, on request, be completed.

Article 6.

The High Contracting Parties shall not surrender their own nationals except in cases where the latter have obtained the nationality of the Party applied to after having committed the offence.

Article 7.

Extradition shall not take place if the person claimed is being proceeded against in the country applied to for the same offence, or if he has already been discharged by the examining magistrate or amnestied, convicted or acquitted in respect of such offence, unless the laws of that country permit of the re-opening of criminal proceedings.

Article 8.

A person surrendered by one of the High Contracting Parties to the other may be tried for any other offence connected with that for which he was surrendered, subject to the provisions of Article 4.

In the case of offences unconnected with the original offence, the State to which extradition has been granted may request the other State to extend the effects of such extradition to the acts in regard to which it desires to institute criminal proceedings.

Article 9.

The person surrendered may not be delivered up to a third State for any offence committed prior to his extradition other than that for which extradition was granted, without the consent of the Party by which he was surrendered.

Article 10.

The restrictions on the prosecution or punishment of the person surrendered, as set out in Articles 8 and 9, shall not apply if such person has failed to leave the territory of the other Party within thirty days of his final release, or if he returns there, or if he is again surrendered after having left the aforesaid territory, or if, before his first extradition he consented, in a formal statement to the competent authorities of the Party applied to, to his surrender to the third State before the completion of extradition formalities.

Article 11.

If the person claimed is being proceeded against, or has been convicted, by the authorities of the Party applied to for an offence other than that for which extradition is requested, extradition may be postponed, without prejudice to the decision to be taken immediately with regard to the requisition, until the criminal proceedings are concluded and the sentence carried out or remitted.

Nevertheless, if under the laws of the State making the requisition, criminal proceedings will shortly be barred by lapse of time, or if delay in extradition may prejudice the proceedings, temporary extradition shall be granted, in the absence of special reasons to the contrary, provided always that the person surrendered is returned on the conclusion of the proceedings in the country making the requisition.

Article 12.

The requisition for extradition shall be made through the diplomatic channel.

Extradition shall be granted in virtue of a record of conviction or of a warrant of arrest or any other document equivalent to such a warrant, which shall indicate the character of the offence charged and the provisions of the criminal law applied or applicable.

The aforementioned documents shall be drawn up in the form prescribed by the laws of the Party making the requisition and shall be transmitted together with a copy of the laws applied or applicable, together, if possible, with a description of the person claimed, his photograph and any other particulars such as may help to establish his identity.

The requisition and the documents in support shall be drawn up in the official language of the Party making application. They shall be accompanied by a translation, either in the language of the Party applied to or in the French language, prepared or certified correct by a sworn interpreter, who shall sign and seal them, or by an official interpreter of the Party making the requisition.

Article 13.

Immediately on the receipt of a requisition for extradition, the necessary measures shall be taken with a view to giving effect to it. The arrested person shall be held in custody until a decision on the requisition has been duly reached, and, if extradition is granted, until this has taken place.

In urgent cases, provisional arrest may be authorized on notification being given, even by telegraph, of the existence of one of the documents referred to in the second paragraph of the preceding Article, or as the result of a description appearing in the Bulletin of the criminal investigation department.

The judicial authorities and diplomatic and consular agents of the Party making the requisition shall be empowered to transmit such notification direct to the Ministry of Justice or to the competent judicial authority of the State applied to.

Any person thus provisionally arrested shall be released if the requisition for extradition together with the necessary documents in support have not reached the Party applied to within a period of one month following the arrest. That period may be extended to two months if the person to be surrendered is reported to be a dangerous criminal or if the arrest has been carried out solely in consequence of a description appearing in the Bulletin of the criminal investigation department. The release of the person concerned shall not prevent his extradition on the transmission of the requisition and necessary documents by the Party making the application.

Article 14.

Should the extradition of any person be requested for different offences by several States, including one of the High Contracting Parties, extradition shall not be granted to that Party unless the offence committed in its territory is regarded as the most serious under the laws of the Party applied to.

Article 15.

Should the extradition of any person be requested by more than one State for the same offence, the requisition of the State in whose territory the offence took place shall, as a rule, be given precedence.

Article 16.

When extradition has been granted, the person surrendered, if he is to be conveyed by land from the territory of the Party applied to, shall be taken to a point on the frontier fixed by previous agreement with the third State which has undertaken responsibility for his conveyance in transit, as soon as arrangements have been made to receive him. If the person surrendered is to be conveyed by sea, he shall be taken to the port of the Party applied to at which he is to be placed on board ship.

Should the State making the requisition fail to make provision, in so far as it is concerned, for effecting extradition within a period of three months from the date of its notification that such extradition has been granted, the person whose surrender was requested shall be set at liberty.

Article 17.

The money and articles found in the possession of the person claimed at the time of his arrest shall be impounded and handed over to the State making the requisition. This shall apply to all articles which may serve as evidence of the offence, and they shall be handed over even if it is impossible to effect extradition because of the flight or death of the offender.

The rights of third parties in the articles thus impounded shall be reserved, and such articles shall be restored to them free of charge at the end of the trial.

Article 18.

Permission for the conveyance in transit through the territory of one of the High Contracting Parties of a person surrendered by a third State to the other Party shall be granted on receipt of a request made in accordance with the procedure laid down in Article 12 by the authorities of the country claiming the extradition, provided always that the person concerned is not a national of the country of transit.

Permission for transit shall be given, without any legal formality, by the competent Ministry of the country to which application for transit is made, provided always that the offence is not one of those referred to in Article 5 and that the granting of such permission is not open to serious objections on grounds of public policy. The person under arrest shall be conveyed by the most rapid means under the surveillance of agents of the country to which application for transit is made.

The arrested person shall not as a rule be allowed to enter the country to which application for transit is made until permission for transit has been granted.

Article 19.

The expenses occasioned by the arrest, detention and maintenance of a person whose extradition or provisional arrest has been requested, and the cost of his conveyance to the frontier station of a third State at which he is to be handed over, or to the port of embarkation, shall be borne by the Party applied to. The same shall apply to the cost of seizing and keeping the articles impounded at the time of arrest and the cost of despatching the articles to be handed over with the person claimed.

Should extradition be effected by way of transit, the costs of the detention, maintenance and conveyance of the person surrendered and the transport of the articles which are handed over with him shall be refunded by the Party making the requisition.

CHAPTER II.

JUDICIAL ASSISTANCE IN CRIMINAL MATTERS.

Article 20.

If, for the purposes of criminal proceedings, the judicial authorities of one of the High Contracting Parties should consider it necessary to obtain the evidence of witnesses resident in the other State, or to secure assistance in any other matter connected with the preliminary examination of the case, a rogatory commission shall be sent for the purpose and effect shall be given to it in conformity with the laws of the country to which it is addressed.

In urgent cases, rogatory commissions may form the subject of direct communications between the judicial authorities of the two States.

The same procedure shall be followed :

(a) For the seizure of articles which have formed the subject of an offence or in consequence of a judicial decision ordering seizure, subject always to the rights of third parties ;

(b) In judicial investigations with a view to the application of preventive measures.

Article 21.

The execution of a rogatory commission shall only be refused if, in the State applied to, such execution does not lie within the competence of the judges.

In cases in which the authority applied to is not competent, the rogatory commission shall immediately be forwarded to the competent judicial authority of the same State, in the manner prescribed by the laws of that State.

Article 22.

Should it be deemed necessary to serve a procedural document or a judgment on a person in the territory of one of the High Contracting Parties, the document shall, subject to the special provisions set out below, be served, at the request of the competent authority, by the competent official.

The Party applied to shall return the original to the other Party, certifying that service has taken place.

Article 23.

If, for the purpose of criminal proceedings in the territory of one of the High Contracting Parties, the judicial authority should deem it necessary to obtain communication of articles required in evidence, or of documents in the possession of the authorities of the other Contracting Party, communication shall, on request, be granted, on condition that the Party making the request shall return such articles and documents as soon as possible.

The provisions of the preceding paragraph shall also apply when the criminal proceedings relate to an offence for which the person charged has already been tried by the judicial authorities of the Party applied to, and also when the purpose of the proceedings is the application of an accessory penalty or of preventive measures.

Article 24.

If, in criminal proceedings, the personal attendance of a witness or expert should be required, the Party in whose territory such witness or expert is to be found shall, on its receipt, have the summons served on the persons concerned.

The summons shall indicate the allowance to be paid for travelling and subsistence expenses, and also the amount which the State applied to may advance to the witness or expert and recover from the State making the request.

No witness or expert shall be proceeded against or arrested for previous offences or convictions or for participation, in any way, in the acts forming the subject of the proceedings in which he has been summoned to appear as witness or expert, during the time required for that purpose and for his return to his own country.

Article 25.

If, in criminal proceedings in one of the two countries, the confrontation of persons who are in custody in the other country should be deemed desirable, the Party applied to shall, unless there are special reasons to the contrary, such as formal objection to such a course on the part of the person in custody, grant the application on the strict understanding that such person shall be sent back as soon as possible.

Article 26.

Should a national of one of the High Contracting Parties be convicted or acquitted of an offence punishable by a penalty involving loss of personal liberty in the territory of the other Party, the latter shall, as soon as possible, communicate an abstract of the judgment to the country to which the convicted person belongs and, on request, supply the complete text of such judgment.

The communication shall contain all such particulars as are required for the full identification of the convicted person, the place and date of the offence, the articles of the laws applied and, where appropriate, the execution of the sentence.

Article 27.

Should the judicial authorities of one of the High Contracting Parties deem it necessary to obtain information regarding the law of the other Contracting Party, or to possess the text of any of its laws, they shall be entitled to request such information or the communication of the desired texts.

Article 28.

All requests for which provision is made in the present chapter and any other request regarding matters of criminal law shall be sent direct by the Ministry of Justice of the Party making the request to that of the Party applied to.

The request and the documents shall be drawn up in accordance with the provisions of the last paragraph of Article 12.

Article 29.

The Party applied to shall give effect to the request, unless there are special reasons to the contrary or it considers that internal public law and order would thereby be affected.

Notifications of convictions and summonses to appear in answer to charges issued by the courts of one of the High Contracting Parties against nationals of the other Party shall, however, not be served on such persons. Nor shall nationals of one of the Contracting Parties be charged and examined at the request of the other Party.

Article 30.

The High Contracting Parties waive all claim to the refund of costs occasioned by compliance with requests under the present chapter, except in regard to expert opinions, the costs of which shall be borne by the Party making the request.

CHAPTER III.
FINAL PROVISIONS.

Article 31.

The High Contracting Parties reserve the right to extend by mutual agreement, to be signified by an exchange of notes, the application of the present Treaty to their colonies or any other territories under their sovereignty.

Article 32.

The present Treaty shall be ratified and the ratifications exchanged at Tallinn as soon as possible.

Article 33.

The present Treaty shall come into force three months after the exchange of ratifications and shall remain in force for six months after the date of denunciation by either of the High Contracting Parties.

In faith whereof the above-named Plenipotentiaries have signed the present Treaty and have thereto affixed their seals.

Done at Rome, this 10th day of August, 1935, in two copies, one of which shall be retained by each of the signatory States.

(L. S.) T. JANSON.

(L. S.) MUSSOLINI.