

N° 2829.

**PORTUGAL
ET TCHÉCOSLOVAQUIE**

Convention d'extradition et d'assistance judiciaire en matière pénale.
Signée à Lisbonne, le 23 novembre 1927.

**PORTUGAL
AND CZECHOSLOVAKIA**

Convention regarding Extradition and Legal Assistance in Criminal Matters. Signed at Lisbon, November 23, 1927.

¹ TRADUCTION. — TRANSLATION.

No. 2829. — CONVENTION ² BETWEEN THE PORTUGUESE REPUBLIC AND THE CZECHOSLOVAK REPUBLIC REGARDING EXTRADITION AND LEGAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT LISBON, NOVEMBER 23, 1927.

French official text communicated by the Permanent Delegate of the Czechoslovak Republic accredited to the League of Nations. The registration of this Convention took place September 25, 1931.

THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC and THE PRESIDENT OF THE PORTUGUESE REPUBLIC, being desirous of regulating the legal relations between the two States 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 CZECHOSLOVAK REPUBLIC :

M. Emil SPIRA, Doctor of Laws, Head of Department at the Ministry of Justice.

M. Karel HALFAR, Doctor of Laws, Head of the International Treaties Department at the Ministry of Foreign Affairs.

THE PRESIDENT OF THE PORTUGUESE REPUBLIC :

Dr. ABEL DE ANDRADE, Professor at the Faculty of Law, Lisbon.

Dr. José CAEIRO DA MATA, Professor at the Faculty of Law, Lisbon,

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

CHAPTER I.

EXTRADITION AND CONVEYANCE IN TRANSIT OF CRIMINALS.

Article 1.

OFFENCES FOR WHICH EXTRADITION MAY BE GRANTED.

The Contracting Parties undertake to deliver up to each other, upon requisition being made, persons found within the territory of one of them who are being proceeded against or have been condemned by the judicial authorities of the other Party for any offence for which extradition may be granted under the laws of the Party applied to :

(a) If the offence in question is punishable under the laws of the two States — even if those laws are applicable to only part of their territory — with imprisonment for at

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 Prague, October 27, 1930.

least one year or a heavier penalty, or if the person claimed has been sentenced for the same offence to imprisonment for at least six months or a heavier penalty ;

(b) If the offence has been committed on the territory of the applicant State ;

(c) If the institution of proceedings in connection with the offence is not, under the law of the State applied to, a matter solely within the competence of its own courts.

If the offence has been committed outside the territory of the applicant State, extradition shall only be granted in cases where the legislation of the State applied to admits, under similar circumstances, of proceedings being instituted for the same offences committed outside its territory.

Extradition shall also be granted for attempts to commit the said offences or for complicity therein, when such acts are punishable under the laws of both Contracting Parties.

If the offence in respect of which extradition has been applied for is punishable in Czechoslovakia with death, the Portuguese authorities shall grant extradition only on condition that the death penalty is not carried out.

Article 2.

EXTRADITION OF NATIONALS.

The Contracting Parties shall in no case be required to surrender their own nationals.

If the person claimed has applied for nationalisation in the State applied to before his extradition has been requested, the decision regarding the requisition for extradition may be postponed until the question of nationalisation has been decided.

Article 3.

OFFENCES FOR WHICH EXTRADITION MAY NOT BE GRANTED.

Extradition shall not be granted :

(a) For political crimes or acts connected therewith.

The State applied to shall alone be competent to decide whether the offence is of this nature.

An outrage committed against the person of the Head of a State shall not be deemed to be a political offence or an act connected with such offence, when it constitutes assassination or homicide, or an attempt to commit such crime or complicity therein ;

(b) For purely military offences ;

(c) For Press offences, strictly so-called ;

(d) For offences against the finance laws ;

(e) For offences in respect of which proceedings can only be instituted on the complaint of the injured party and can be discontinued if that party so desire.

(f) If exemption from prosecution or punishment has been acquired through lapse of time under the laws in force in all parts of the territory of either Contracting Party or under the laws of the State in which the offence was committed, before the accused has been arrested or committed for examination, or if it is impossible to take proceedings against him, or to carry out the sentence for other legal reasons ;

(g) If proceedings have been instituted against the person claimed for the same offence in the country applied to, or if proceedings against him in that country have been dropped, or if he has been pardoned, or if he has already been convicted or acquitted in respect of the same offence, unless the laws of the country in question allow of the reopening of criminal proceedings in consequence of new facts.

Article 4.

REQUISITION FOR EXTRADITION.

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

It shall be accompanied by the indictment, the warrant of arrest or any other equivalent judicial document or the judgment pronounced against the person claimed. The originals of these documents or certified copies must be produced, which shall indicate briefly the offence in question and its particular character and denomination and shall be accompanied by the text of the penal law of the applicant State which covers the offence, with a statement of the penalty involved. They shall, whenever possible, be accompanied by a description of the person claimed, and his photograph or other particulars which may help to establish his identity.

In the case of offences against property, the amount of the damage actually caused or of the damage which the offender purposed to cause, shall be indicated.

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 in the form required by its laws and shall bear the official seal. They shall be accompanied by translations in the official language of the State applied to, made or certified correct by a sworn translator (interpreter) who shall sign and seal them, or an official translator (interpreter) of the applicant Party.

Article 6.

ADDITIONAL EXPLANATIONS.

Should there be any doubt whether the offence for which extradition has been demanded comes within the provisions of the present Convention, the applicant State shall be asked to furnish explanations, and extradition shall only be granted when the explanations furnished are of a nature to dispel such doubts.

The applicant State may in no case be required to furnish proof of the guilt of the person claimed.

The State applied to may in each case fix a period within which additional explanations shall be furnished ; this period may, however, on receipt of a reasoned request, be prolonged.

Article 7.

MEASURES TO ENSURE EXTRADITION.

On receipt of the requisition for extradition together with the documents mentioned in Articles 4 and 5, the State applied to shall take all necessary steps to arrest the person claimed and prevent his escape unless extradition should appear to be *a priori* inadmissible.

Article 8.

PROVISIONAL ARREST ; RELEASE OF THE PERSON ARRESTED PROVISIONALLY.

In urgent cases, the person claimed may be taken provisionally into custody even before the requisition for extradition has been submitted, on notification by post or telegraph, provided

reference is made in such notification to a warrant of arrest or a judgment, and that the nature of the offence is also indicated. This notification may be addressed direct by the Court or competent authority of the applicant State to the competent authority of the State applied to. The applicant authority must, however, confirm the telegraphic notification within one week.

The competent authorities of each of the Contracting Parties may, even in the absence of such notification, provisionally arrest any person discovered in their territory whose description has been given by the authorities of the other Party, or who is entered as wanted by the police in their respective bulletins or registers.

The authority which has effected the arrest of a person in conformity with the foregoing paragraphs, shall at once inform the authority applying for this arrest, at the same time mentioning the place in which he is being kept in custody.

If, within a period of fifteen days from the date on which this information was forwarded in conformity with the above provisions, the authorities of the other Contracting Party have not intimated that they will ask for the surrender of the person arrested, the latter may be set at liberty.

Article 9.

RELEASE OF THE PERSON CLAIMED.

Should the requisition for extradition accompanied by the documents in support mentioned in Articles 4 and 5 not be received within six weeks from the date on which, in accordance with the third paragraph of the preceding Article, the intimation of arrest was despatched, the person arrested may be set at liberty.

If additional explanations have been asked for under Article 6, the person arrested may also be set at liberty if such explanations are not furnished to the State applied to within an appropriate period fixed or extended by the latter.

Article 10.

REQUISITIONS FOR EXTRADITION SUBMITTED BY MORE THAN ONE STATE.

Should a person whose extradition is requested by one of the Contracting Parties also be claimed by one or more other States, the State applied to may surrender him either to the State of which he is a national or to the State in whose territory the offence was committed.

If the State of which the person claimed is a national is not one of the applicant States, the State applied to may inform it of the requisitions for extradition received from the other States, granting it a period of fifteen days within which it may declare whether it also intends to apply for extradition. The provisions of the first paragraph of Article 9 shall also be applicable to this requisition for extradition. Otherwise the person claimed shall be surrendered to the State in whose territory the most serious offence was committed, or, if the offences are of equal gravity, to the State whose requisition for extradition was first received.

Those provisions shall not affect any obligations which either of the Contracting Parties may have previously assumed towards third States.

Article 11.

POSTPONEMENT OF EXTRADITION.

If proceeding are in progress against the person claimed, or if that person has already been sentenced in the State applied to for an offence other than that leading to the requisition for extradition, or if he is being kept there in custody for other reasons, his extradition may be postponed

until the proceedings are concluded or until he has served his sentence or until the sentence has been remitted or until he ceases to be kept, for other reasons, in custody.

This postponement shall not prevent the giving of a decision without delay in regard to the extradition, unless there are special reasons, which shall immediately be brought to the notice of the applicant State.

Article 12.

TEMPORARY SURRENDER OF THE PERSON CLAIMED.

If, however, the postponement of extradition, as mentioned in the previous Article, might under the laws of the applicant State, lead to exemption from prosecution through lapse of time or in any other way seriously hinder the prosecution, the person claimed may, unless special considerations render such a course undesirable, be surrendered temporarily, provided he be sent back as soon as the judicial investigation, on account of which his temporary surrender was requested, has been concluded in the applicant State.

Article 13.

PERIOD ALLOWED FOR EXTRADITION.

If extradition has been granted, the applicant State, which shall, as soon as possible, procure the necessary authority for the conveyance in transit of the person claimed, shall be required to take charge of him within three months from the date on which it is informed that extradition has been granted. After that period, the person in question may be set at liberty.

Article 14.

EXTENSION OF THE EFFECTS OF EXTRADITION.

The extradited person may be proceeded against or punished in the State to which extradition has been granted or handed over to a third country for an offence, committed before his extradition, other than that for which the extradition was granted, only :

(a) If the State granting extradition consents to this course. Such consent may not be refused if the offence is an extraditable one under the present Convention. The State which has surrendered the offender may require that such consent be requested in the manner laid down for requisitions for extradition, with the documents in support mentioned in Articles 4 and 5. The State which has obtained consent shall notify the other of the final result of the proceedings and shall transmit to it a copy of the judgment.

(b) If, having been at liberty to do so, he did not leave the territory of the State to which he was surrendered within one week after his final release, or if he subsequently returned to that territory.

Article 15.

CONVEYANCE OF CRIMINALS IN TRANSIT.

If an offender is to be surrendered by one of the two Parties to a third State, the other Party shall, on request, allow the offender to be conveyed through its territory on the production, either in the original or in a certified copy, of one of the documents mentioned in Article 4.

The provisions relating to the authorisation for extradition shall also apply to conveyance in transit.

Conveyance in transit shall be effected by the agents of the Party applied to under such conditions and by such means as that Party may determine.

CHAPTER II.

LEGAL ASSISTANCE IN CRIMINAL MATTERS.

Article 16.

GENERAL PROVISIONS.

The Contracting Parties shall afford each other legal assistance in criminal matters. They shall provide for the service of writs in connection with penal proceedings upon persons within their territory; they shall institute judicial investigations, such as the examination of witnesses and experts, the taking of affidavits, the conducting of searches and the seizure of objects; they shall transmit to each other legal documents and articles serving as proof of the crime.

The convictions and summonses to answer a charge, issued by the Courts of one of the Contracting Parties against the nationals of the other Party, shall not however be served on the latter. Similarly, a national of one of the Contracting Parties may not, on the request of the other Party, be subjected to cross-examination as an accused person.

The request for legal assistance shall be drawn up in the official language of the applicant State; it shall bear the seal of the authority making application and be transmitted direct to the Ministry of Justice of the State applied to by that of the applicant State, or, in the case of military penal proceedings, by the Supreme Department of Military Justice. The provisions of Article 5 relating to translation shall apply both to the request and to the documents attached thereto.

The action to be taken on a request for legal assistance in criminal matters shall be subject to the laws of the State in whose territory the required judicial investigation is to take place. The record of proceedings shall not be translated into the official language of the applicant State.

Legal assistance in criminal matters may be given within the limits stipulated by the laws of each State, even when extradition is not compulsory under the present Convention.

Article 17.

SUMMONING AND ATTENDANCE IN COURT OF NATIONALS OF THE OTHER CONTRACTING STATE.

Should it be considered necessary or desirable, in a penal case pending before the Courts of one Contracting State, to secure the attendance in court of a witness or expert who is in the territory of the other Contracting State, the authorities of the latter State shall transmit to him the summons to attend that Court.

The expenses arising out of the attendance in court of a witness or expert shall be borne by the applicant State, and the summons shall indicate the sum to be assigned to the witness or expert by way of travelling expenses and subsistence allowance; it shall also indicate the sum which may be advanced to him by the State applied to, such sum to be repaid by the applicant State.

No witness or expert, whatever his nationality, who is in the territory of one of the two Parties and who, when summoned by the other Party, voluntarily attends in the Courts of the latter, may be prosecuted or detained for previous offences or on the ground of complicity in the acts forming the subject of the case in which he is appearing.

Such persons shall, however, forfeit this privilege if they fail, of their own free will, to leave the territory of the applicant State within a fortnight from the date on which their attendance in Court has ceased to be necessary.

If the person summoned as a witness happens to be in prison in the territory of the Party applied to, his attendance may be requested, provided that he be returned as soon as possible. A request of this nature can only be refused on serious grounds, in particular, if the person summoned expressly objects.

Similarly, the conveyance in transit in both directions, through the territory of one of the Contracting Parties, of a person in custody in a third country, whom the other Contracting Party may desire to confront with an accused person, or to hear as a witness, shall be granted under the conditions mentioned above.

Article 18.

HANDING OVER OF ARTICLES SERVING AS PROOF OF THE CRIME.

The authorities of the two Contracting Parties shall hand over to one another on request any articles which the accused may have procured as a result of his offence or which may serve as proof of the offence, even if they are subject to seizure or confiscation.

If these articles are in the possession of the accused at the time of his extradition or of his conveyance in transit, they shall be handed over, as far as possible, at the time at which the extradition or transit takes place. They shall be handed over even when extradition, having been granted, cannot be carried out owing to the death or the escape of the offender. All articles of the same kind which the accused may have concealed or deposited in the country granting extradition and which have been discovered subsequently shall also be handed over.

The rights which third parties may have acquired over these articles shall be reserved and these articles shall in such cases be returned to the State applied to free of charge and without delay after the trial.

The State which has been asked to hand over these articles may retain them provisionally if it requires them in connection with penal proceedings. It may also, when handing them over, reserve its right to have them restored for the same purpose, undertaking in turn to restore them as soon as possible.

Article 19.

COMMUNICATION OF CONVICTIONS AND EXTRACTS FROM CRIMINAL RECORDS.

The Contracting Parties shall communicate to each other every six months sentences which have acquired the force of *res judicata* or extracts from final judgments, including conditional sentences, pronounced by their judicial authorities against nationals of the other Party, when these are entered, in accordance with the laws in force, in their records of previous convictions or records of the courts.

They shall also communicate to each other any further decisions concerning the said judgments which have been entered in the records of previous convictions or records of the Courts.

The authorities of either of the Contracting Parties responsible for keeping the records of previous convictions or the records of the Courts shall furnish without charge to the authorities of the other Party, upon their request, information from the records of previous convictions or the records of the Courts concerning particular cases.

The communications in question shall be exchanged direct between the Ministry of Justice and Education at Lisbon and the Ministry of Justice or the Ministry of National Defence at Prague, as the case may be.

Article 20.

COSTS OF LEGAL ASSISTANCE IN CRIMINAL MATTERS.

Expenses occasioned by requisitions for extradition or any other form of legal assistance in criminal matters shall be borne by the Party in whose territory they were incurred. The authorities of the Party applied to shall, however, inform the applicant Party of the amount of these costs with a view to their reimbursement by the person responsible for defraying them.

An exception shall be made in the case of fees paid for expert opinions of any kind and for the expenses occasioned by the summoning or attendance of persons kept in custody in the territory of the State applied to and the cost of conveyance in transit. These costs shall be borne by the applicant State.

Expenses occasioned by temporary surrender and the return of accused persons as mentioned in Article 12 of the present Convention shall be borne by the applicant State.

CHAPTER III.

FINAL PROVISIONS.

Article 21.

VALIDITY OF THE CONVENTION.

The present Convention shall be ratified and the ratifications shall be exchanged at Prague as soon as possible.

It shall come into force one month after the exchange of ratifications and shall remain in force until six months after one of the Contracting Parties has notified the other of its intention to terminate the Convention.

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

Done in duplicate, at Lisbon, November 23, 1927.

(L. S.) Dr. Emil SPIRA.

(L. S.) Dr. Karel HALFAR.

(L. S.) Abel DE ANDRADE.

(L. S.) José CAEIRO DE MATA.