

N° 2653.

BULGARIE ET ESPAGNE

Convention d'extradition et d'assistance judiciaire en matière pénale.
Signée à Sofia, le 17 juillet 1930.

BULGARIA AND SPAIN

Convention regarding Extradition
and Legal Assistance in Criminal
Matters. Signed at Sofia, July 17,
1930.

¹ TRADUCTION. — TRANSLATION.

No. 2653. — CONVENTION ² BETWEEN THE KINGDOM OF BULGARIA AND THE KINGDOM OF SPAIN REGARDING EXTRADITION AND LEGAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT SOFIA, JULY 17, 1930.

French official text communicated by the Bulgarian Chargé d'Affaires at Berne. The registration of this Convention took place March 25, 1931.

HIS MAJESTY THE KING OF THE BULGARIANS, and HIS MAJESTY THE KING OF SPAIN, being desirous of regulating judicial relations between the two States with regard to the extradition and conveyance in transit of criminals, and legal assistance in criminal matters, have decided to conclude a convention for this purpose and have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF THE BULGARIANS :

His Excellency M. Athanasius D. BOUROFF, Minister for Foreign Affairs and Public Worship;

HIS MAJESTY THE KING OF SPAIN :

His Excellency the Marquis OF DOSFUENTES, Envoy Extraordinary and Minister Plenipotentiary at Sofia ;

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

CHAPTER I.

Article I.

EXTRADITION OF CRIMINALS.

The Contracting Parties undertake to surrender to each other, upon requisition being made, persons within the territory of one Party who are being proceeded against or who have been convicted by the judicial authorities of the other Party for any offence for which extradition may be authorised under the laws of the Party to which application is made :

a) Provided the offence in question is punishable under the laws of both States — even if these laws are applicable only to part of their territory — with loss of liberty for at least one year or a heavier penalty, or if the person claimed has been sentenced for the same offence to loss of liberty for at least six months or to a heavier penalty ;

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 Sofia, February 25, 1931.

- b)* Provided the offence has been committed within the territory of the applicant State ;
- c)* Provided proceedings in connection with the offence are not, under the law of the State applied to, reserved for its own Courts.

If the offence has been committed outside the territory of the applicant State, extradition shall only be granted when the law of the State applied to authorises proceedings in similar circumstances, 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.

Article 2.

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

If the person claimed has made application, before his extradition is demanded, for naturalisation in the State applied to, the decision which regard to the requisition for extradition may be postponed until a decision has been taken on the application for naturalisation.

Article 3.

OFFENCES FOR WHICH EXTRADITION MAY NOT BE GRANTED.

Extradition shall not be granted :

- (a)* For political offences or acts connected therewith.

The State applied to shall alone be competent to decide whether an offence is of this nature. An attack on the person of a Head of State, on the members of his family, or on the Head or responsible ministers of the Government shall not be deemed to be a political offence or an act connected with such an offence, when the attack constitutes assassination or homicide or an attempt to commit such crime, or complicity therein ;

Further seditious acts committed individually or collectively with anarchist or social revolutionary aims shall not be considered to be political offences ;

- (b)* For purely military offences ;

- (c)* For press offences in the strict sense of the term ;

- (d)* For offences against Customs, revenue or other finance laws ;

(e) For offences in respect of which proceedings can only be instituted on the complaint of the aggrieved party, and which can be discontinued when the aggrieved party withdraws his complaint ;

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

(g) If the person claimed is being proceeded against for the same offence in the State applied to, or if he has already been discharged because there are no grounds for prosecution, or convicted or acquitted in respect of the same offence, unless the law of the State in question allows 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 or authentic copies of these documents shall be submitted; they shall indicate briefly the offence complained of and its particular character and denomination, and shall be accompanied by the text of the penal law of the applicant State relating to the offence, with a statement of the penalty involved. They shall, whenever possible, be accompanied by a description of the person claimed, together with his photograph or other particulars which might help to establish his identity.

In the case of offences against property, the amount of the damage actually caused or, if possible, the amount of the damage which the offences intended 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 a translation in the official language of the State applied to, made or certified correct by a sworn interpreter, who shall sign and seal them, or by an official interpreter of the applicant Party, or in the French language.

Article 6.

ADDITIONAL EXPLANATIONS.

Should there be any doubt whether the offence for which extradition is claimed 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 doubt.

In no case shall the applicant State be required to produce proof of the guilt of the person claimed.

The State applied to may in each case fix a period for the furnishing of additional particulars; this period shall, however, be extended if a request is made to that effect, accompanied by a statement of the reasons on which it is based.

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 it should from the outset appear impossible to grant extradition.

Article 8.

PROVISIONAL ARREST.

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 that

reference is made in such notification to a warrant of arrest or a judgment and that 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 shall nevertheless confirm the telegraphic notification within a period of eight days.

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 an arrest in conformity with paragraphs 1 and 2 of the present Article shall without delay inform the authority applying for this arrest, at the same time mentioning the place in which the person 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 the surrender of the person arrested will be requested, he may be set at liberty.

Article 9.

The person arrested may also be set at liberty if the requisition for extradition, accompanied by the documents in support mentioned in Articles 4 and 5, should not be received within six weeks from the date of despatch of the intimation of arrest referred to in paragraph 3 of the preceding Article.

In cases where 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 the appropriate period fixed or extended by the latter.

Article 10.

REQUISITIONS SUBMITTED BY MORE THAN ONE STATE.

Should the 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 received from other States, granting it a period of fifteen days within which to declare whether it also intends to apply for extradition. The provisions of Article 9, paragraph 1, shall also be applicable to its 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.

These provisions shall not affect the undertakings which either of the Contracting Parties has previously entered into in regard to third States.

Article 11.

POSTPONEMENT OF EXTRADITION.

If the person claimed is being proceeded against or has been convicted in the territory of 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 penalty has been remitted or he ceases for other reasons to be kept in custody.

This postponement shall not prevent a decision being given without delay in regard to the extradition, except for special reasons, which shall immediately be brought to the notice of the applicant State.

Article 12.

TEMPORARY SURRENDER OF THE PERSON CLAIMED.

If the postponement of extradition as mentioned in the preceding Article might, under the laws of the applicant State, lead to immunity being acquired through lapse of time, or seriously hinder the prosecution in any other way, the person claimed may, unless special considerations render such a course undesirable, be surrendered temporarily, provided he is 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 THE EXECUTION OF EXTRADITION.

If extradition has been granted, the applicant State, which shall procure the necessary transit authorisations as soon as possible, shall be bound to obtain the surrender of the person claimed within a period of three months after receipt of the notification that extradition has been granted. On the expiry of this period the person concerned may be released.

Article 14.

EXTENSION OF THE EFFECTS OF EXTRADITION.

The person surrendered may only be proceeded against or punished in the State to which extradition has been granted, or delivered up to a third country for an offence other than that which gave rise to his extradition and committed prior to it :

(a) If the State granting extradition consents thereto. Such consent may not be refused if the offence is an extradition offence under the present Convention. The State which has surrendered the offender may require that such consent be requested in the manner laid down for the requisition for surrender, with the documents in support mentioned in Articles 4 and 5. The State which has received consent shall inform the other of the final result of the proceedings and shall transmit to it a certified copy of the judgment given ;

(b) If, though free to do so, he has not left the territory of the State to which he was surrendered within one week from the time at which he was finally set at liberty, or if he subsequently returns to such territory.

Article 15.

CONVEYANCE IN TRANSIT.

If the extradition of an offender takes place between one of the Contracting Parties and a third State, the other Party shall allow his transit through its territory merely upon the production of the original or an authentic copy of one of the documents mentioned in Article 4.

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

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

CHAPTER II.

Article 16.

LEGAL ASSISTANCE IN CRIMINAL MATTERS.

In criminal matters the Contracting Parties shall afford each other legal assistance. They shall in particular cause writs in connection with penal proceedings to be served on persons within their territories, shall carry out measures connected with judicial investigations, such as the hearing of witnesses, expert examinations, the taking of affidavits, searches and the seizure of articles, and shall hand over to each other judicial documents and articles serving as proof of the crime.

Sentences and summonses to appear for trial, issued by the Courts of one Contracting Party in respect of nationals of the other Party shall not, however, be served on these nationals. Similarly, the national of one Contracting Party may not be examined as an accused person at the request of the other Party.

The request for legal assistance shall be drawn up in the official language of the applicant State, shall bear the seal of the authority making application, and shall be transmitted direct to the Ministry of Justice of the State applied to by the Ministry of Justice of the applicant State or, in the case of military criminal proceedings, by the supreme authorities of military justice. The provisions of Article 5 regarding translation shall also apply to the request and to the documents attached thereto.

The request for legal assistance in criminal matters shall be complied with subject to the laws of the State in whose territory the measure of judicial investigation is to be carried out. The records relating thereto shall not be translated into the official language of the applicant State.

Legal assistance in criminal matters may be granted, within the limits laid down in the law of each State, even in cases where, according to the provisions of the present Convention, there is no obligation to grant extradition.

Article 17.

SUMMONING AND ATTENDANCE IN COURT OF PERSONS FROM THE OTHER CONTRACTING STATE.

Should it be considered necessary or desirable, in a criminal 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 shall communicate to such person the subpoena addressed to him for this purpose.

The expenses connected with the attendance of a witness or expert shall be borne by the applicant State, and the subpoena shall indicate the sum to be allocated to the witness or expert as travelling expenses and subsistence allowance; it shall also indicate the sum which may be advanced to him by the State applied to subject to reimbursement by the applicant State.

No witness or expert, whatever his nationality, who is in the territory of one of the Contracting Parties and who, when summoned by the other Party, voluntarily attends in the Courts of the latter, may be proceeded against or detained for previous offences or on the grounds of complicity in the offence forming the subject of the case in which he appears.

Such persons shall, however, forfeit the above privilege should they fail to leave, although free to do so, the territory of the applicant State within one week from the date on which their attendance in Court has ceased to be necessary.

Should the person summoned be in custody in the territory of the State applied to, a request may be made for his attendance if assurances are given that he will be sent back at the earliest possible date. A request of this kind may only be refused for special reasons, and in particular, if the person in custody who has been summoned expressly declares that he is opposed thereto.

Similarly, under the conditions stated above, the conveyance and return, through the territory of one of the Contracting Parties, of a person in custody in a third country, shall be granted if the other Contracting Party considers it desirable to confront him with a person who is being proceeded against, or to hear him as a witness.

Article 18.

HANDING OVER OF ARTICLES SERVING AS PROOF OF THE CRIME.

The authorities of the two Contracting Parties shall, on being requested to do so, deliver up to each other articles which an accused person may have obtained as the result of his offence or which may serve as proof of the crime ; this shall apply even when the articles in question are liable to seizure or confiscation.

If these articles are in the possession of the accused at the time of his extradition or conveyance in transit, they shall, as far as is practicable, be handed over at the time when extradition or conveyance in transit takes place. They shall be delivered up even when extradition, though granted, cannot take place owing to the death or escape of the accused. This provision shall also apply to all articles of the same kind which the accused may have concealed or deposited in the country granting extradition, and which may subsequently be discovered.

Nevertheless, the rights which third parties may have acquired over these articles shall be reserved ; in this case such articles shall be returned after the trial as soon as possible and free of charge to the State applied to.

The State which has been asked to deliver up such articles may retain them temporarily if it requires them' in connection with criminal investigations. 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 quarterly all final convictions or extracts from all definitive sentences, including conditional sentences, passed by their judicial authorities on nationals of the other Party, so far as these are entered, under the laws in force, in their records of convictions or judicial registers.

They shall also communicate to each other any further decisions concerning the said sentences which are entered in the records of convictions or the judicial registers.

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

The communications referred to above shall be exchanged direct between the Ministry of Justice at Madrid and the Ministry of Justice at Sofia.

Article 20.

COSTS OF LEGAL ASSISTANCE IN CRIMINAL MATTERS.

The costs resulting from a requisition 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 liable to pay them.

This rule shall not apply to fees paid for expert opinions of any kind, or to expenses occasioned by the summoning or attendance in Court of persons in custody in the territory of the State applied to, or to expenses resulting from conveyance in transit. All these expenses shall be borne by the applicant State.

The applicant State shall also bear the cost of temporary surrender and return mentioned in Article 12 of the present Convention.

CHAPTER III.

Article 21.

FINAL PROVISIONS.

The present Convention shall be ratified and the ratifications shall be exchanged at Sofia 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 Sofia, July 17, 1930.

(L. S.) A. D. BOUROFF, *m. p.*

(L. S.) Marquis DE DOSFUENTES, *m. p.*