

N° 2973.

POLOGNE ET SUÈDE

Convention d'extradition et d'aide
judiciaire en matière pénale, avec
protocole final. Signés à Varsovie,
le 30 août 1930.

POLAND AND SWEDEN

Convention regarding Extradition
and Judicial Assistance in Criminal
Matters, with Final Protocol.
Signed at Warsaw, August 30,
1930.

¹ TRADUCTION. — TRANSLATION.No. 2973. — CONVENTION² BETWEEN POLAND AND SWEDEN REGARDING EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT WARSAW, AUGUST 30, 1930.

French official text communicated by the Swedish Minister for Foreign Affairs. The registration of this Convention took place June 9, 1932.

HIS MAJESTY THE KING OF SWEDEN and THE PRESIDENT OF THE POLISH REPUBLIC, desirous of giving each other legal assistance in respect of the extradition of criminals and in penal matters, have resolved to conclude a convention and have appointed for that purpose as their Plenipotentiaries:

HIS MAJESTY THE KING OF SWEDEN :

His Excellency Cossva D'ANCKARSVÄRD, Envoy Extraordinary and Minister Plenipotentiary of Sweden at Warsaw ;

THE PRESIDENT OF THE POLISH REPUBLIC :

His Excellency Auguste ZALESKI, Minister for Foreign Affairs ; and
His Excellency Stanislaw CAR, Minister of Justice ;

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

Article I.

¹The Contracting States undertake to surrender to one other on application persons who, being within the territory of one of them, are being proceeded against or have been convicted by the judicial authorities of the other State in respect of actions involving, in Sweden under the Penal Code or Maritime Law the penalty of hard labour (*straffarbete*), and in Poland under the legislation in force, whether in the whole or only in a part of Polish territory, a penalty involving deprivation of liberty of whatever kind or sort for a period of two years, or any graver penalty.

Extradition shall also be granted in the case of persons who have been convicted or are being proceeded against for an offence punishable under military penal law, provided the said offence is of such a kind that, if committed by persons not subject to the said law, it would be extraditable under the terms of the preceding paragraph.

Should any change be made in the penal legislation of one of the two States, their Governments may, by mutual agreement and by a simple exchange of notes, define extraditable offences, in conformity with their respective laws in a sense other than that laid down in the present Article.

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 Stockholm, May 9, 1932.

Article 2.

The Contracting States shall not extradite their own nationals, and furthermore the Polish Republic shall not extradite nationals of the Free City of Danzig.

Should the person whose extradition is applied for have submitted a request for naturalisation to the authorities of the State applied to, before the application for extradition has been received by the said State, the latter may postpone its decision on the application for extradition, until such time as a decision has been taken with regard to the request for naturalisation.

Furthermore, extradition shall not be granted for offences committed on the territory of the States applied to or on board a vessel of its nationality. Nevertheless the extradition of a person who has been convicted or is being proceeded against for complicity in an offence committed in a place outside the territory of the State applied to, not being on board a vessel of its nationality, shall be granted even if the act of complicity must be taken to have been committed within the territory of that State or on board a vessel of its nationality.

Article 3.

Extradition shall not be granted :

(a) For political offences or actions connected with political offences : nevertheless, if the action in respect of which extradition is applied for also includes an offence of a non-political character, extradition may be granted, provided the offence must be regarded as essentially non-political in character, when due regard is had to the circumstances of the particular case : attempts on the life of the Head of a State shall not be regarded as political offences ;

(b) For offences against a public authority, unless they also include another offence which would be extraditable under the terms of Article 1 ;

(c) For offences which only come under special laws relating to the freedom of the press ;

(d) For offences which only come under laws relating to Customs or taxation of the public finances.

The decision as to whether the offence is to be regarded as non-extraditable under the provisions of the present Article shall rest with the State applied to.

Article 4.

Furthermore, extradition shall not be granted :

(a) If under the laws of the State applied to the period within which the offence must be tried or the sentence executed has expired ;

(b) If under the laws of the State applied to criminal proceedings are exclusively reserved to the jurisdiction of that State ;

(c) If in respect of the same action, criminal proceedings, taken against the person whose extradition is applied for within the territory of the State applied to, have been terminated by the passing of a sentence or in any other manner ; nevertheless, acquittal or the dismissal of the case shall not prevent extradition, if solely based on the fact that the offence was committed in another country.

Article 5.

Extradition may be refused if criminal proceedings in respect of the same offence have already been taken against the person whose extradition is applied for in the territory of the State applied to.

Article 6.

If the person whose extradition is applied for is being proceeded against, or has been convicted, in the State applied to for an offence other than that in respect of which the application for extradition is made, extradition may be postponed until the criminal proceedings are terminated, or until the sentence has been executed or remitted.

Nevertheless, in very special circumstances the State applying may claim provisional extradition of the accused for the purpose of preliminary examination with a view to proceedings taken in its own territory. Such application shall be granted, unless precluded by a preliminary examination with a view to criminal proceedings in the country applied to. The State applying shall be under obligation immediately to surrender the accused back to the State which has provisionally extradited him, as soon as a final sentence has been passed.

Notwithstanding postponement of the surrender of the person applied for to the State applying, the State applied to shall decide immediately with regard to the application for extradition.

Article 7.

Should the same person be claimed by several States, either for the same offence or for a number of offences, decision as to which of the said States shall have the preference shall rest with the State applied to.

If the applications for extradition relate to different offences, the State applied to in granting the extradition may attach thereto the condition that the person claimed shall be surrendered to another State on the expiration of his sentence.

Article 8.

The person extradited may not be proceeded against or convicted for an offence committed before his extradition other than that for which extradition has been granted, save in the following cases :

(1) Where the State which has granted extradition gives its special consent : such consent may not be withheld, if the conditions warranting the application for extradition are complied with in accordance with the provisions of the present Convention.

(2) Where the person extradited has failed to quit the territory of the State to which he has been surrendered within one month from the close of the criminal proceedings or, if he has been convicted, within one month from the expiry or remittal of his sentence, or where he returns to the country of his own accord.

During the period of one month laid down in the preceding paragraph, the extradited person shall not be prevented in any way from quitting the country, unless he commits a further offence.

Article 9.

Re-extradition of an extradited person to a third State may only be granted with the consent of the State which has surrendered him in the first instance, or in the contingencies contemplated in Article 8, Nos. 1-2.

Article 10.

When granting extradition, the State applied to may do so on condition that the extradited person shall not be brought before a Court which has only been empowered to deal with affairs of the character in question for the purpose of the particular case or as a result of exceptional and special circumstances.

When extradition is granted for an offence against military penal law or an offence against a public authority, it may be made a condition that the person surrendered shall only be punished for his offence to the extent to which it is extraditable. Where extradition is granted for an offence of an essentially non-political character, it may be made a condition that the person surrendered shall not be punished for the act in question as he would have been for an offence of a political nature.

It may furthermore be required that the person surrendered shall not be sentenced to death or, if he has already been sentenced to death, that the sentence shall not be carried out.

Article 11.

Applications for extradition shall be made through the diplomatic channel. The application must indicate the nationality of the person whose extradition is applied for.

Applications for extradition must be accompanied by a warrant of arrest issued by the competent judicial authority, or by a copy of a sentence which has either become executory, or which formally requires or as a necessary legal consequence comports the arrest of the person applied for. The above-mentioned documents, or a special document, must state the offence in respect of which the application for extradition is made, together with a detailed statement of the offences charged and the text of the penal laws applicable to such acts. In the case of offences against property, the amount of the damage done or attempted to be done shall be stated as far as possible. Furthermore, either the application for extradition or some one of the documents annexed thereto shall contain, if possible, a description of the person applied for, together with his photograph and any other information which may be useful for establishing his identity. The annexes to the application for extradition shall be produced in the original or in a certified true copy, and shall be accompanied by a certified translation in the language of the State applied to, unless they are already made out in the said language.

Article 12.

Where extradition does not appear on the face of it to be unwarranted, the necessary measures to prevent the escape of the accused shall be taken immediately, even if the State applied to has doubts as to whether the necessary conditions to warrant extradition under the present Convention are present. In such case the State applied to shall address to the State applying a request for further information. If the latter does not furnish adequate explanations within thirty days from the date on which the request is submitted, the preventive measures may be cancelled. The time-limit of thirty days may be extended at the request of the State applying.

Article 13.

In urgent cases, and pending a regular application for the extradition of a person, the said person may be provisionally arrested, unless extradition appears on the face of it to be unwarranted. Application for such arrest shall be made, either through the diplomatic channel or directly by post or by telegraph, by the judicial authorities, public prosecutors or public safety agents (police) of the State applying to the competent authorities of the State applied to. If the application is made direct, it must be made either in English or in French. The application must specify the offence with which the person applied for is charged, the date and place of the offence and, where possible, the nationality of the person applied for and his description, and should also state whether a warrant of arrest has been issued or sentence passed fulfilling the conditions laid down in Article 11, paragraph 2.

Even in the absence of such application, a person detected in the territory of one of the two States, notice of whom has been given by the authorities of the other State, may be provisionally arrested or, should the authorities of the other State so request, may be put on the police black list of the State in whose territory he is.

Article 14.

The date and place of provisional arrest shall be immediately communicated direct, in English or in French, to the authority applying or to the authority which has ordered proceedings and to the competent Ministry of the State applied to. Even where the application for arrest is not made through the diplomatic channel, such notice must always be given, through the Ministry of Foreign Affairs of the State applied to, to the diplomatic representative of the State applying. If within five weeks from the date on which notice of arrest is received, the State applying does not forward to the other State a regular application for extradition of the detained person, the latter may be released. The time-limit may be extended on application.

Article 15.

Where extradition has been granted, the State applying shall be under obligation to receive the person applied for within a time-limit to be fixed by the State applied to, not exceeding one month. On the expiry of this period the person in question may be set free.

Article 16.

All articles derived from the offence, or capable of serving as evidence against the person applied for, which are in the possession of the latter at the time of his arrest or are discovered later, shall be impounded and handed over to the State applying at the same time as the accused.

In consenting to hand over the articles to which the present Articles relates, the State applied to may make any reservation it may deem necessary with a view to safeguarding the rights of third parties; it may also temporarily retain the said articles, should it have need of them in connection with criminal proceedings.

Article 17.

Where a third State surrenders an offender to one of the Contracting States, the other State shall, on application, allow the passage of the extradited person in transit through its territory. The provisions of Articles 2, 3, 4, 8 and 11 shall apply to applications for extradition in transit.

Article 18.

If, in the course of proceedings in respect of a non-political offence, a judicial authority of one of the Contracting States finds it necessary to serve a writ on a person residing in the territory of the other State, or to hear witnesses, or to effect any other judicial investigations in the said territory, an application to that effect shall be made in writing through the diplomatic channel, and the said application shall be granted in so far as the legislation of the State applied to permits.

The above provisions shall not oblige Contracting States to search premises or to make seizures.

The State applying shall, on demand, so far as possible be given adequate previous notice of the date and place at which the action applied for is to be taken.

Article 19.

If, in the course of investigations in respect of proceedings in one of the Contracting States, it is found necessary to produce articles capable of serving as evidence for the prosecution, which

are in the hands of the authorities of the other State, application therefor shall be made through the diplomatic channel, and shall be granted, unless in any given case there are special reasons to the contrary.

The provisions of Article 16, paragraph 2, shall apply to the production of the articles to which the preceding paragraph relates.

Article 20.

The execution of the measures provided for in Articles 18 and 19 may be refused :

(1) If the action to be taken is not within the powers of the judicial authorities in the State applied to ;

(2) If the State applied to is of opinion that the execution of the measures applied for is calculated to infringe its sovereignty or endanger its security ;

(3) If the alleged offence is such as, under the laws of the State applied to, is not punishable, or constitutes an offence either of a purely military character or of the character referred to in Article 3 ;

(4) In the case of a person who is a national of the country applied to.

Furthermore, the communication of files and documents may be refused in the case of specially important files, or in cases in which the despatch of the same might occasion serious inconvenience.

Article 21.

The applications and documents concerning legal assistance to which Articles 18 and 19 relate shall be drawn up in the language of the State applied to, or shall be accompanied by a translation in that language certified correct by a sworn or official translator of the State applied to, or by a translator of the State applying whose competence is attested by a diplomatic or consular agent either of the State applying or of the State applied to.

Article 22.

Each of the Contracting Parties undertakes to communicate through the diplomatic channel to the other Party, in the form of an extract from the judicial records, any and every definitive criminal sentence or other further decision relating to such sentences, recorded in the said records with reference to a national of the latter Party.

Article 23.

Expenditure arising out of the procedure for extradition or any other legal assistance in penal matters shall be chargeable to the Party on whose territory such expenditure has been incurred.

An exception shall be made in respect of fees for expert services of any kind, which shall be repaid by the State applying.

Likewise all expenditure occasioned by the passage in transit of the accused through the intermediate territories, to which Article 17 relates, and all expenditure resulting from the temporary surrender to which Article 6, paragraph 2, relates shall be chargeable to the State applying.

Article 24.

The present Convention shall be ratified, and ratifications shall be exchanged at Stockholm as soon as possible.

It shall come into force one month after the exchange of ratifications and shall remain in force so long as one of the High Contracting Parties has not given notice to the other, six months beforehand, of its intention to abrogate it.

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

Done, in duplicate, at Warsaw, August 30, 1930.

(L. S.) C. ANCKARSVÄRD.

(L. S.) Auguste ZALESKI.

(L. S.) St. CAR.

FINAL PROTOCOL.

At the moment of proceeding to sign the Convention concerning Extradition of Offenders and Legal Assistance in Penal Matters, the undersigned Plenipotentiaries declare themselves in agreement on the following questions :

Ad Articles 3 and 10.

Offences against a public authority within the meaning of Articles 3 and 10 shall be held to be : in Sweden, the offences to which Chapter X of the Penal Code relates, and in Poland, the offences to which the following articles or paragraphs relate, namely Articles 121-123, 125-132, 134, 142, 145, 146, 154 and 173 of the Penal Code of 1903 ; §§ 65, 68-82, 217 and 218 of the Penal Law of 1852 ; §§ 105-109, 114-118 and 120 of the Penal Code of 1871 ; and the offences to which the Decree of January 8, 1919, concerning Acts calculated to interfere with the Elections to the Diet and with the Performance of the Duties of Members thereof (Official Gazette of the Polish State No. 5, item 96) and the Law of January 26, 1907, concerning Penal Provisions for the Protection of the Freedom of Elections and Meetings (Official Gazette of the Austrian State No. 18) relate.

Ad Article 20, No. 2.

If a document to be served contains a threat of penalties, the State applied to shall have the right to refuse to take the action for which application is made.

Done, in duplicate, at Warsaw, August 30, 1930.

(L. S.) C. ANCKARSVÄRD.

(L. S.) Auguste ZALESKI.

(L. S.) St. CAR.