

N° 4552.

POLOGNE ET SUISSE

Traité d'extradition et d'entr'aide judiciaire en
matière pénale, et protocole final. Signés à
Berne, le 19 novembre 1937.

*Texte officiel français communiqué par le Conseil fédéral suisse. L'enregistrement
a eu lieu le 13 avril 1939.*

POLAND AND SWITZERLAND

Treaty regarding Extradition and Judicial
Assistance in Criminal Matters, and Final
Protocol. Signed at Berne, November
19th, 1937.

*French official text communicated by the Swiss Federal Council. The registration
took place April 13th, 1939.*

TRADUCTION. — TRANSLATION.

No. 4552. — TREATY¹ REGARDING EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE REPUBLIC OF POLAND AND THE SWISS CONFEDERATION. SIGNED AT BERNE, NOVEMBER 19TH, 1937.

THE SWISS FEDERAL COUNCIL

and

THE PRESIDENT OF THE REPUBLIC OF POLAND,

Desirous of providing for the prosecution of offenders, have agreed to settle by a Treaty their reciprocal obligations to provide judicial assistance in criminal matters and have appointed as their Plenipotentiaries for that purpose :

THE SWISS FEDERAL COUNCIL :

Monsieur Giuseppe MOTTA, President of the Confederation, Head of the Federal Political Department ;

THE PRESIDENT OF THE REPUBLIC OF POLAND :

Monsieur Jan MODZELEWSKI, Doctor of Science, Envoy Extraordinary and Minister Plenipotentiary of Poland at Berne, and
Monsieur Lucjan BEKERMANN, Doctor of Law, Public Prosecutor at the Court of Cassation ;

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

Article 1.

The Contracting Parties undertake to surrender to each other on application, in accordance with the rules laid down by the present Convention, persons on the territory of one of them who are prosecuted or convicted by the judicial authorities of the other Party for acts which, under the legislation of the two Parties, are punishable and may give rise to extradition.

Extradition shall also be granted for attempts to commit such offences, and for complicity of any kind punishable under the laws of the two Contracting Parties.

Extradition shall be granted for persons sentenced, when the sentence or the remainder of the sentence to be served is deprivation of liberty for not less than six months or a heavier sentence, and for persons awaiting trial for an offence, when the maximum penalty applicable to the offence with which they are charged is, under the laws of the two Parties, deprivation of liberty for not less than one year or a heavier penalty.

Article 2.

Switzerland shall not extradite Swiss nationals, and the Republic of Poland shall not extradite nationals of Poland or of the Free City of Danzig.

Article 3.

There shall be no obligation to extradite for the following :

1. Political offences or acts connected with such offences ;

The State to which application is made shall be the sole judge as to whether the offence is of this character ;

¹ Came into force January 22nd, 1939.

2. Offences solely of a military or fiscal character ;
3. Offences connected solely with press matters ;
4. If the proceedings or the penalty are barred through lapse of time under the laws of the State to which application is made or of the applicant State ;
5. If the act to be punished was committed on the territory of the State to which application is made or, should it be committed elsewhere, if penalties in respect of it are, under the laws of that State, reserved for its own jurisdiction ;
6. If, in respect of the same act, criminal proceedings have been instituted in the State to which application is made against the individual whose extradition is claimed, or have been definitively terminated by a sentence of a court of law or in any other manner. In any case, a sentence of acquittal or the dismissal of the case shall not prevent extradition if based solely on the fact that the offence was committed in a foreign country.

Article 4.

Requisitions for extradition shall be made through the diplomatic channel. Requisitions must be accompanied by the following :

(a) A record of a sentence which has become executory or by a warrant of arrest or some other instrument equivalent to such documents, issued by the competent judicial authorities of the State making the requisition ;

(b) A detailed statement of facts containing particulars of the legal characteristics of the offence, the place and date at which it was committed, and as far as possible, in cases of offences against property, the amount of damage that the offender has caused or intended to cause ;

(c) A copy of the provisions of the criminal law applicable in the State making the requisition to the act with which he is charged ;

(d) Particulars of the nationality and civil status of the person whose extradition is applied for and as far as possible all documents and information necessary for identifying him, such as a personal description, photograph and finger-print record.

The requisition for extradition for a person who has been sentenced to imprisonment and who has already served part of his sentence must be further accompanied by a document stating the duration of the period he still has to serve.

The above-mentioned documents shall be supplied either in the original or in certified copies.

Article 5.

Should there be any doubt as to whether the offence is covered by the provisions of the present Convention, the State to which application is made shall ask the State making the requisition for explanations and shall not grant extradition until the explanations supplied are such as to dispel any doubts. The State to which requisition is made may in each case fix a time-limit for the production of additional information. This time-limit may, however, be extended if a reasoned request is made.

Article 6.

On receipt of a requisition for extradition, accompanied by the documents provided for in Article 4, the State to which requisition is made shall, in accordance with its laws, take all measures necessary to place under detention the individual whose surrender is claimed and to prevent his escape, unless extradition appears beforehand to be inadmissible.

If there is no serious reason to believe that the requisition is not justified, the person whose surrender is requested must, as a general rule, be arrested and kept in prison until the extradition procedure is completed.

Article 7.

Measures for the detention of the person whose surrender is claimed under the previous Article shall be taken even before extradition has been requested :

(a) If a police or judicial authority of the State making the requisition submits to the police or judicial authority of the other State a requisition mentioning the existence of one of the documents in support of the requisition specified in Article 4 (a), stating the offence and giving assurances as to the despatch of the requisition for extradition ;

(b) If a public notice, with an adequate description of the person whose surrender is requested, has been issued, announcing that the person is wanted in the other State for an extraditable offence and that his extradition will be requested if he is found.

The police or judicial authority to which direct requisition is made, or the central authority of the State to which the requisition is made (in Switzerland, the Federal Department of Justice and Police ; in Poland, the Ministry of Justice) shall immediately notify the authority making the requisition of the measures which have been taken in respect of the individual whose surrender is requested. Such measures may be cancelled if the requisition for extradition is not submitted in accordance with Article 4, within thirty days from the notification of the above-mentioned communication.

In the case of (b) above, upon notification by the central authority of the State to which requisition is made (in Switzerland, the Federal Department of Justice and Police ; in Poland, the Ministry of Justice) to the central authority of the State making the requisition, the assurances as to the despatch of the requisition for extradition shall be confirmed within fifteen days.

Article 8.

If by reason of an offence other than that giving rise to the requisition for extradition, criminal proceedings are being brought against the person whose extradition is requested in the State to which requisition is made, if he has to serve a sentence there or if he is under detention on other grounds, extradition may be postponed until he has complied with the requirements of justice in the said State.

Nevertheless, such postponement may not be adduced as a ground for the postponement of a decision as to the requisition for extradition.

Article 9.

Notwithstanding the provisions of the preceding Article, the person whose extradition is requested may be surrendered temporarily to the State making the requisition, in order that he may appear before the judicial authorities of that State, on the express condition that he shall be returned to the State to which requisition is made as soon as the said authorities have taken a decision as to the offence for which extradition is sought or as soon as the investigatory proceedings which have occasioned the temporary surrender of the person whose extradition is claimed have been completed.

Article 10.

When the extradition of a person is requested not only by one of the Contracting Parties but also by a third State, the State to which requisition is made shall have full freedom to decide to what State he shall be surrendered, with due regard to the interests of justice.

Article 11.

An extradited person may not be prosecuted or punished in the State to which he has been surrendered for offences other than those on account of which extradition has been specifically granted.

An extradited person may, however, be prosecuted or punished for any other offence committed before extradition, or may be re-extradited to a third State :

(a) If the State which granted extradition subsequently consents thereto, such consent may not be refused provided that the conditions giving rise to the requisition for extradition are fulfilled in accordance with the present Convention, or

(b) If the extradited person, having had the option of doing so, has not of his own accord, within the month following his final release, left the territory of the State to which he has been surrendered, or if he subsequently returns there.

The State which has requested extradition or the consent provided for in (a) of the present Article shall inform the State to which requisition is made, if it so requires, of the final result of the prosecution and, if sentence is passed, shall communicate to it a copy of the sentence.

Article 12.

If the State making the requisition has not had the person whose extradition is requested surrendered to it within one month from the date on which it has been informed that he can be immediately surrendered, the person in question may be set at liberty.

Article 13.

If the person whose extradition is requested has contracted civil obligations in the State to which requisition is made, such obligations shall not prevent extradition.

Article 14.

If a person who is once extradited has succeeded in escaping from justice and is once more on the territory of the State which has extradited him, he shall be arrested at the request of the competent authorities of the other State.

The surrender of a person who has escaped shall be carried out without new formalities by the Federal Department of Justice and Police on behalf of Switzerland or the Ministry of Justice on behalf of Poland.

If, by reason of a further offence committed in the State to which requisition is made, the person whose extradition is requested has criminal proceedings brought against him there, if he has to serve a sentence there, or if he is under detention there on other grounds, his surrender may be postponed until he has satisfied the requirements of justice in that State.

Article 15.

Transit across the territory of one of the two Contracting Parties of a person surrendered to the other Party by a third State shall be granted, subject to the production of the original or of a certified copy of the documents mentioned in Article 4, provided that the act causing the application for passage in transit lies within the purview of the present Convention.

The provisions concerning extradition shall also apply to transit.

Arrangements for transit shall be made by the agents of the State to which application is made under such conditions as are laid down by the said State, and by such route as that State may determine.

Article 16.

The authorities of the two Contracting Parties shall hand over to each other reciprocally, upon request, any articles which the person whose extradition is requested has obtained by means of his offence, articles which may be used to establish the offence and articles which are liable to confiscation.

Should such articles be found in the accused's possession, they shall if possible be surrendered at the time of extradition or of conveyance in transit. Articles so surrendered shall also include any of the same character which the person concerned may have hidden or deposited in the State granting extradition and which may be discovered later. Such articles shall be surrendered even if it has not been possible to carry out the extradition by reason of the death or escape of the accused.

Nevertheless, any rights which the State to which the requisition is made or which third persons may have acquired in respect of the said articles shall be reserved.

The State to which the requisition is made may provisionally retain articles seized if it regards them as necessary for a criminal investigation which is being carried out on its territory. It may

also, when transmitting them, stipulate that they shall if required be returned for the same purpose, undertaking to return them again as soon as possible.

Money and securities connected with the offence may not be used to meet the expenditure of the State to which requisition is made under Article 22.

Article 17.

The Contracting Parties undertake, in so far as their respective laws allow, to take proceedings against their own nationals who are accused of having committed extraditable acts, in the other State, in the same way as if the offence had been committed in their own country.

A State desiring to apply the provisions of the preceding paragraph shall send, in the manner provided in Article 4, a requisition accompanied by exhibits, files, documents and all necessary information.

The State of origin of the individual against whom proceedings are being taken shall inform the other State of the result of the proceedings and, if sentence is passed, shall communicate to it a copy thereof.

Article 18.

The Contracting Parties undertake to give each other judicial assistance in criminal matters :

- (a) By the serving of documents such as summonses, notices and sentences ;
- (b) By the execution of letters of request for the hearing of accused persons, witnesses or experts and also by other documents connected with the investigation of the case, in so far as they are not contrary to the laws of the State to which the requisition is made ;
- (c) By the communication of particulars of previous convictions of the accused.

Requisitions for judicial assistance must in particular state the nationality of the accused, the offence which has occasioned the proceedings, the object of the requisition, and the names and addresses of the witnesses, experts or persons to whom documents are to be sent. They must, if necessary, contain a short statement of the facts of the case. Requests for the serving of documents must furthermore indicate the nature of the document to be served.

Requisitions from the Swiss authorities shall be forwarded direct by the Federal Department of Justice and Police to the Polish Ministry of Justice, and those of the Polish authorities direct by that Ministry to the above-mentioned Swiss authority. They shall be dealt with in accordance with the laws of the State to which the requisition is made, but, if desired by the authority making the requisition, they may be dealt with under a special procedure, provided that such procedure is not contrary to the laws of the State to which requisition is made. The authorities of the State to which requisition is made shall apply the same measures of constraint as in the case of similar requests from the authorities of the said State.

If no action can be taken as a result of such request, the State making the requisition shall be notified to that effect, the reasons therefor being given.

After notification, the State to which requisition is made shall submit to the State making the requisition a receipt dated and signed by the addressee or an attestation by the authority to which the requisition is made, recording the fact, form and date of the surrender. If the document to be notified is forwarded in duplicate, the receipt or the attestation shall be entered on one of the duplicates or shall be annexed thereto.

Article 19.

The Contracting Parties shall not be obliged to grant each other judicial assistance within the meaning of the previous Article :

- (a) When the State to which the requisition is made is of opinion that compliance with the requisition for judicial assistance is of such a character as to affect its sovereignty or its security ;
- (b) When the offence is not such as to entail punishment as a crime or an offence under the laws of the State to which the requisition is made ;
- (c) When the requisition concerns political, military, fiscal or press questions ;

(d) When the proceedings are brought against a national of the State to which the requisition is made who is at the moment on the territory of the said State ;

(e) When the person cited is threatened, in case he does not appear, with measures of constraint or other prejudicial measures.

Furthermore, the State to which the requisition is made shall not be obliged to comply with a request for search, seizure, expert examination or despatch of documents or objects serving to establish the offence when its legislation is contrary to such action or when the necessary conditions for extradition required under the present Convention are not fulfilled.

If judicial assistance consists in the seizure or despatch of documents or objects serving to establish an offence, the provisions of Article 16, third, fourth and fifth paragraphs, shall apply.

Article 20.

If, in a criminal case which is pending before a court of one of the two Contracting Parties, the personal appearance of a witness or an expert who is in the territory of the other Contracting Party is considered necessary or desirable, the court shall send a summons for that purpose through the channel provided for in Article 18, third paragraph.

The expenditure involved by the personal appearance of a witness or expert shall be borne by the State making the requisition ; the summons shall state what sum is to be granted to the witness or expert as travelling and subsistence allowance. The State to which the requisition is made may grant an advance to the witness or expert, subject to repayment by the State making the requisition as soon as the person summoned has stated that he or she is prepared to comply with the summons.

No witness or expert, whatever his nationality, summoned in accordance with the first paragraph of the present Article to appear voluntarily before the courts of the other Party may, on the territory of the other, be prosecuted or held in custody either for previous acts or sentences or for complicity in the acts which have given rise to the case in respect of which he is summoned. The summons provided for in the first paragraph of this Article shall make express mention of the provisions of this paragraph.

These persons shall, however, forfeit these privileges if they do not, of their own accord, leave the territory of the State making the requisition, within three days after the date on which the competent court has stated that their presence is no longer necessary. The said court must communicate to them, at the time of the summons, this temporary time-limit of protection.

Article 21.

The Contracting Parties shall, at the end of every three months, notify to each other sentences which have become executory by the tribunals of one of them against the nationals of the other, and which are to be entered on the judicial file, in accordance with the regulations of the State in which sentence was passed.

The communications referred to in this Article shall be made through the channel provided for in Article 18, third paragraph.

Article 22.

The expenditure arising out of the requisition for extradition or any other mutual judicial assistance in criminal matters shall be chargeable to the State on the territory of which the expenditure was occasioned.

The State making the requisition shall still be liable for payment of charges paid in respect of expert examinations of all kinds and costs of transit across the territory of the State to which requisition has been made. The State making the requisition shall also be liable for payment of expenditure arising out of any measure taken under Articles 9 or 20, second paragraph, of the present Convention.

Article 23.

Requisitions for extradition, annexes thereto, letters of request and annexes thereto, applications for the serving of documents and their annexes, and all correspondence in respect of mutual judicial

assistance must be accompanied, if not drawn up in French, by a translation into that language, certified by the authority of the State making the requisition or by a sworn translator.

The documents drawn up with a view to the execution of requisitions for judicial assistance, and the communications provided for in Article 21, shall be forwarded without a translation.

Article 24.

The present Treaty shall be ratified in accordance with the constitution and laws of the two Contracting Parties and shall come into force on the thirtieth day after the exchange of instruments of ratification, which will take place in Warsaw as soon as possible.

There shall be no limitation to the duration of the Treaty. Each Contracting Party shall have the right to denounce it at any time. Denunciation shall take effect six months after notification.

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

Done in Berne, in duplicate, this 19th day of November, nineteen hundred and thirty-seven.

(L. S.) (Signed) MOTTA.

(L. S.) (Signed) MODZELEWSKI.

(L. S.) (Signed) BEKERMAN.

FINAL PROTOCOL.

At the moment of proceeding to the signature of the present Treaty, the undersigned, duly authorised for that purpose, recognise :

1. That extradition shall always take place subject to the reservation that the person extradited shall not be judged by an extraordinary tribunal ;
2. That the criminal laws of the two Contracting Parties do not provide for corporal punishment ;
3. That the Governments of the two States may state their desire, should the death penalty be applicable in the State making the requisition, that the offender should not be sentenced to this penalty or, should he already have been sentenced to it, that it be commuted to a penalty involving deprivation of liberty. The State making the requisition shall inform the State to which the requisition is made as to the action taken in response to this desire.

Done at Berne, in duplicate, this 19th day of November, nineteen hundred and thirty-seven.

(Signed) MOTTA.

(Signed) MODZELEWSKI.

(Signed) BEKERMAN.