

No. 3936

**BELGIUM
and
BRAZIL**

**Extradition Treaty. Signed at Rio de Janeiro, on 6 May
1953**

Official texts: French and Portuguese.

Registered by Belgium on 14 July 1957.

**BELGIQUE
et
BRÉSIL**

Traité d'extradition. Signé à Rio-de-Janeiro, le 6 mai 1953

Textes officiels français et portugais.

Enregistré par la Belgique le 14 juillet 1957.

[TRANSLATION — TRADUCTION]

No. 3936. EXTRADITION TREATY¹ BETWEEN BELGIUM AND BRAZIL. SIGNED AT RIO DE JANEIRO, ON 6 MAY 1953

His Majesty the King of the Belgians and the President of the Republic of the United States of Brazil, desiring to render more effective the collaboration of their respective countries in combating crime, have decided to conclude an Extradition Treaty and for that purpose have appointed as their plenipotentiaries :

His Majesty the King of the Belgians, Mr. Marcel-Henri Jaspas, his Ambassador Extraordinary and Plenipotentiary at Rio de Janeiro; and

The President of the Republic of the United States of Brazil, Dr. João Neves da Fontoura, Ambassador and Minister of State for Foreign Affairs,

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

Article I

The High Contracting Parties undertake, in conformity with the present Treaty and with the laws in force in each of the two countries, to surrender to each other any persons who are being proceeded against or have been convicted by the judicial authorities of one of the Parties and who are present in the territory of the other Party.

If the person is a national of the State applied to, the said State shall not be obliged to surrender him. In such cases, if extradition is not granted, the person whose extradition is applied for shall, if the laws of the State applied to so allow, be proceeded against and tried in the said State. In that event, the applicant State shall be responsible for supplying the necessary evidence for the prosecution and trial of the accused, and the final judgement or decision shall be communicated to the said State.

Article II

Extradition shall be granted in respect of the following crimes and offences if, under the laws of the State applied to, the act is punishable by at least one year's imprisonment :

1. Any crime against life, including homicide, murder, parricide, infanticide, poisoning and abortion.

¹ Came into force on 14 July 1957, one month after the exchange of the instruments of ratification at Brussels, on 14 June 1957, in accordance with article XVIII. This Treaty is not applicable to the Territories of the Belgian Congo and Ruanda-Urundi.

2. Any act of malicious wounding or grievous bodily harm resulting in death or lasting infirmity, permanent employment disability or serious mutilation of a limb or organ.
3. Rape, violent indecent assault; the offence of carnal knowledge committed by a trick.
Indecent assault, whether violent or not, against the person of a minor of either sex who is under the age specified by the criminal law of both States.
Any sex offence committed by inciting, facilitating or encouraging the debauchery or corruption of a minor of either sex with the object of gratifying the passions of another person.
4. Any offence against personal freedom; arbitrary detention, abduction of a minor, concealment of birth or substitution of a child.
5. Bigamy.
6. Any act endangering the safety of railway travel; total or partial destruction of buildings or of telephone or telegraph equipment; destruction or defacement of public monuments, artistic objects, registers, public documents or other objects for public use; destruction or damage of commodities, goods or other movable property; interference with the execution of public works.
7. Arson.
8. Larceny, petty theft, fraudulent conversion, receiving stolen property and extortion.
9. False pretences.
10. Embezzlement, misappropriation of public funds; offering inducements to a public official and the acceptance of such inducements.
11. False evidence, making a false statement as an expert, perjury or subornation of a witness.
12. Any offence against the laws for the suppression of slavery; traffic in slaves, women or children.
13. Any crime or offence against public credit, including the counterfeiting or alteration of coinage or paper currency, bank notes and other legally acceptable instruments of public credit, or share certificates and other documents issued by the State, corporations or individuals; the forging or alteration of postage stamps, official stamps, government or official stamps or seals, the fraudulent use of the said counterfeit or altered objects, or their issue or putting into circulation with intent to defraud; the fraudulent uttering or abuse of genuine seals, stamps or trademarks.
The falsification of public or private documents, or of official documents or commercial documents; fraudulent uttering of such falsified or counterfeit documents; purloining of documents.

14. Exposure or abandonment of children, if the act results in grievous bodily harm or death.
15. Procuring or the habitual exploitation of the prostitution or debauchery of another.
16. Fraudulent bankruptcy and frauds committed in bankruptcy.
17. Offers or proposals to commit a crime or to participate in a crime, or acceptance of such offers or proposals.

The references to the specific acts enumerated above shall be construed as references not only to direct criminal responsibility or criminal co-responsibility, but also to participation and to attempts, in the case of attempts, however, to that extent only to which attempts are punishable under the laws of both Contracting States.

Article III

Extradition may be denied if the State applied to is competent under its own laws to try the crime or offence.

Extradition shall not be granted :

- (a) If the person whose extradition is applied for has already been proceeded against or tried for the same crime in the State applied to ;
- (b) If under the laws of the State applied to proceedings or penalties are barred by reason of time limitation at the time when it would be possible to surrender the person in question ;
- (c) If the person whose extradition is applied for is to be brought before a special court or judge in the applicant State ;
- (d) If the offence by reason of which the extradition is requested is of a purely military or religious nature, or constitutes a political offence or an act connected with a political offence ; nevertheless, an attempt on the life of the head of a foreign government, or on the life of members of his family shall not, if it takes the form of homicide, murder or poisoning, be deemed to be a political offence or an act connected with a political offence.

1. The authorities of the State applied to shall have exclusive competence to determine whether the act charged is political in character.

2. For the purposes of this Treaty an offence shall be considered a military offence if it takes the form of acts not covered by the ordinary criminal law and is provided for solely in special legislation which is applicable to the members of the armed forces and the object of which is the maintenance of order and discipline in the said forces.

Article IV

If the offence was committed outside the territory of the applicant State, then the application for extradition may be acceded to in cases in which the laws of the State applied to authorize proceedings in respect of the same offence if committed outside its territory.

Article V

The application for extradition shall be made through the diplomatic channel or, in exceptional cases and in the absence of diplomatic representation, directly, that is to say from Government to Government. Extradition shall be granted on production of the following documents :

- (a) In the case of persons merely accused : the original or a certified copy of the warrant of arrest or equivalent document of criminal procedure, issued by the competent foreign authority;
- (b) In the case of convicted persons : the original or a certified copy of the sentence.

These documents must contain exact particulars of the act charged and of the date and place at which it was committed, and be accompanied by a copy of the legislative provisions applicable to the case and by the particulars and records necessary for the purpose of establishing the identity of the person whose extradition is applied for.

Transmission of the application for extradition through the diplomatic channel shall constitute sufficient proof of the authenticity of the documents produced for the purpose, and the said documents shall accordingly be deemed to have been legalized.

Article VI

In urgent cases, the Contracting Parties may request one another, either through their respective diplomatic representatives or direct from Government to Government, to place the accused under provisional arrest and to seize objects which have some connexion with the offence or which may be used as evidence of the offence.

Such a request shall be acceded to if with it is sent a statement certifying the existence of one of the documents mentioned in paragraphs (a) and (b) of the preceding article, and if it is stated therein that, under this Treaty, the offence in question is an extraditable offence.

The provisional arrest shall be effected in the manner and in accordance with the regulations laid down in the legislation of the State applied to.

The arrest shall cease if, within a period of sixty days from the date on which it was effected, the accused has not received one of the documents mentioned in the preceding article. The accused shall not be re-committed to

custody by reason of the same offence unless a formal application for extradition is received accompanied by the said documents.

Article VII

After extradition has been granted, the State applied to shall immediately notify the applicant State that the person to be extradited is at its disposal.

If within sixty days from the date of such notification the person to be extradited has not been surrendered at the place of his destination, the State applied to shall release him and shall not re-arrest him on the same grounds.

Article VIII

The applicant State may send to the State applied to, with the prior consent of the latter, duly authorized agents for the purpose of either helping to verify the identity of the person to be extradited or of escorting him to the territory of the applicant State.

These agents may not perform any acts of authority in the territory of the State applied to and shall be subordinate to the authorities of the latter; the expenses incurred by them shall be defrayed by the Government which sent them.

Article IX

The surrender of the person whose extradition is applied for shall be postponed, without prejudice to the validity of the consent to the extradition, if he is so seriously ill that he cannot without danger to his life proceed to the applicant country or if he is liable to prosecution in the State applied to by reason of some offence other than that in respect of which his extradition was granted. In the latter case, if the person in question is being prosecuted, his extradition may be postponed until the end of the proceeding and, if he is convicted, until he has served his sentence.

Article X

If the extradition of a person is refused, his surrender may not again be requested by reason of the act which occasioned the application for extradition.

If, however, the application for extradition is refused owing to some defect of form and with the express reservation that the application may be renewed, the documents in the case shall be returned to the applicant State, with a reference to the reasons for the refusal and to the reservation.

In this latter case, the applicant State may renew its application, on condition that it presents it formally within a period of sixty days (which may not be extended) from the date on which the said State was notified either directly or through its diplomatic representative of the refusal of its application.

Article XI

If the extradition of a particular person is applied for by more than one State the procedure shall be as follows :

- (a) If the applications relate to the same offence, preference shall be given to the application of the State in whose territory the offence was committed;
- (b) If there are several offences, preference shall be given to the application of the State in whose territory the offence which, in the opinion of the State applied to, constitutes the most serious offence was committed;
- (c) If there are several offences which in the opinion of the State applied to are of equal seriousness, preference shall be given to the application which was submitted first.

Article XII

If the extradition is granted, all the objects having some connexion with the offence or capable of being used as incriminating evidence which are found at the moment of arrest in the possession of the person whose extradition is applied for, and any objects discovered later, shall, if the competent authorities of the State applied to so direct, be seized and delivered to the applicant State.

The said delivery shall take place even if the extradition has been granted but cannot be carried out by reason of the escape or death of the person in question.

Nevertheless, any rights acquired by third parties in the said objects shall be reserved, and after the proceedings these objects shall, if appropriate, be restored to the said parties.

Article XIII

The expenses occasioned by the application for extradition, up to the time of the surrender of the person extradited to the applicant State's guards, duly authorized to accept the surrender, whether at the port of embarkation or at the frontier point indicated by the State applied to, shall be defrayed by the latter State; the expenses subsequent to the surrender, including the cost of conveyance in transit, shall be defrayed by the applicant State.

Article XIV

A person extradited under this Treaty shall not be liable to proceedings or to trial in respect of any other offence committed prior to the application for extradition, nor shall he be surrendered to a third country claiming him, except in the following circumstances, that is to say :

- (a) If he has expressly and freely requested to be tried or to serve his sentence; or

- (b) If the State applied to has consented thereto; or
- (c) If he voluntarily remained in the territory of the applicant State for more than thirty days after his definitive release.

In the circumstances described in sub-paragraph (a), the request of the person extradited shall be communicated to the Government which surrendered him.

The person extradited shall be warned of the possible consequences of a stay of longer than one month in the territory of the State in which he was tried.

Article XV

The conveyance in transit through the territory of one of the Contracting Parties of a person who is extradited by a third State to the other Party and who is not a national of the country of transit shall be permitted, without any other judicial formality, on a simple request and on the production of the original or of a certified copy of one of the documents mentioned in the first paragraph of article V of this Treaty, provided that the act by reason of which the extradition was applied for comes within the terms of this Treaty and is not among the exceptions laid down in article III.

The transport of the accused shall be effected under the supervision of the authorities of the country of transit; the expenses relating thereto shall be defrayed by the applicant State.

Article XVI

In the case of an offence which comes within the terms of article II of this Treaty and which is punishable by death, the Government applied to may make the extradition conditional on the prior assurance, to be given by the applicant Government through the diplomatic channel, that, if the sentence is one of death, that sentence will not be executed.

Article XVII

The person for whose extradition one of the Contracting States has applied to the other State shall be entitled to exercise all the appellate and other remedies which are admitted under the legislation of the State applied to.

Article XVIII

This Treaty shall be ratified as soon as the statutory formalities customary in each of the Contracting States have been complied with; it shall enter into force one month after the exchange of the instruments of ratification, which shall take place as soon as possible in the city of Brussels.

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