

No. 6430

**ISRAEL
and
AUSTRIA**

**Extradition Convention. Signed at Vienna, on 10 October
1961**

Official texts: Hebrew, German and French.

Registered by Israel on 18 December 1962.

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Convention d'extradition. Signée à Vienne, le 10 octobre 1961

Textes officiels hébreu, allemand et français.

Enregistrée par Israël le 18 décembre 1962.

[TRANSLATION — TRADUCTION]

No. 6430. EXTRADITION CONVENTION¹ BETWEEN THE
STATE OF ISRAEL AND THE REPUBLIC OF AUSTRIA.
SIGNED AT VIENNA, ON 10 OCTOBER 1961

The State of Israel and the Republic of Austria, desiring to regulate their mutual relations in the matter of extradition, have agreed as follows :

Article 1

The Contracting States undertake to surrender to each other, subject to the rules and conditions laid down in this Convention, persons within the territory of the one State accused or convicted by the judicial authorities of the other State of any of the offences referred to in article 3, paragraph (1), below.

Article 2

(1) A Contracting State shall not extradite its own nationals.

(2) Nevertheless, either Contracting State may, in accordance with its laws, grant the extradition of a person who was not a national of the requested State at the time of the commission of the offence.

(3) Where a Contracting State refuses extradition under the terms of this article, it shall, upon the application of the requesting State, submit the case to the competent authorities with a view to the institution of judicial proceedings. For this purpose, the files, information and exhibits relating to the offence shall be transmitted through the diplomatic channel. The requesting State shall be informed of the action taken upon its request.

Article 3

(1) Extradition shall be granted for offences punishable under Austrian law by a maximum term of imprisonment for more than one year and extraditable under Israel law.

(2) In the case of a person convicted of one or more extraditable offences, extradition shall be granted only if the term or terms remaining to be served exceed six months' imprisonment.

¹ Came into force on 1 December 1962, thirty days after the exchange of the instruments of ratification which took place at Jerusalem on 31 October 1962, in accordance with the provisions of article 21.

Article 4

(1) Extradition shall not be granted if the offence for which it is requested is regarded by the requested State as a political offence or if the requested State has substantial grounds for believing that extradition has been requested for the purpose of proceeding against or punishing the wanted person for political, racial or religious reasons, or that, for any of these reasons, the position of the person concerned may be worsened if extradition is granted.

(2) The provisions of paragraph (1) above do not apply to offences covered by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948.¹

Article 5

Extradition shall not be granted if the offence for which it is requested consists solely in the violation of military obligations.

Article 6

Extradition shall not be granted for violations of statutory provisions relating to foreign exchange, illicit profits, speculation, price controls or fraud with respect to foodstuffs.

Article 7

In the case of offences relating to taxes, customs or other duties, or monopolies, extradition shall be granted if any special agreement so provides.

Article 8

Extradition shall be refused :

1. If the courts of the requested State are competent, under its laws, to try the offence ;
2. If, for the same offence, the person claimed has already been convicted and has served his sentence, or has been acquitted, in either the requested or the requesting State ;
3. If prosecution or punishment is barred by lapse of time under the laws of either the requesting or the requested State ;

¹ United Nations, *Treaty Series*, Vol. 78, p. 277 ; Vol. 91, p. 383 ; Vol. 96, p. 327 ; Vol. 100, p. 295 ; Vol. 118, p. 306 ; Vol. 120, p. 300 ; Vol. 121, p. 330 ; Vol. 123, p. 304 ; Vol. 124, p. 318 ; Vol. 127, p. 331 ; Vol. 131, p. 336 ; Vol. 134, p. 379 ; Vol. 136, p. 389 ; Vol. 161, p. 369 ; Vol. 166, p. 369 ; Vol. 182, p. 225 ; Vol. 190, p. 381 ; Vol. 196, p. 345 ; Vol. 201, p. 368 ; Vol. 202, p. 334 ; Vol. 210, p. 332 ; Vol. 211, p. 404 ; Vol. 230, p. 435 ; Vol. 243, p. 320 ; Vol. 248, p. 365 ; Vol. 254, p. 407 ; Vol. 277, p. 347 ; Vol. 286, p. 341 ; Vol. 289, p. 316 ; Vol. 317, p. 319 ; Vol. 320, p. 338 ; Vol. 340, p. 341 ; Vol. 344, p. 313 ; Vol. 346, p. 324 ; Vol. 351, p. 392 ; Vol. 367, p. 316, and Vol. 429, p. 274.

4. If, after consultation with the requesting State, it is found that the person claimed is entitled to a pardon or amnesty in that State.

Article 9

(1) If the offence for which extradition is granted is punishable by death under the laws of the requesting State but is not punishable by death under the laws of the requested State, the requesting State shall not pronounce or execute the death sentence.

(2) Where sentence of death has already been pronounced, it shall not be executed but shall be commuted to imprisonment for life ; where sentence of death has not yet been pronounced, a sentence of life imprisonment shall be pronounced, save in cases where a shorter term of imprisonment is prescribed under the laws of the requesting State.

Article 10

(1) In case of urgency, the requesting State may apply to the requested State for the provisional arrest of the person claimed ; the application shall be transmitted by letter, telegram or any other means of communication.

(2) The application for provisional arrest shall state that a warrant of arrest or a judgement of conviction exists and that the application will be followed by a request for extradition ; it shall also give the legal description of the offence concerned and the time, place and pertinent facts of its commission and, wherever possible, a description of the person claimed.

(3) An application for provisional arrest on the part of the Republic of Austria shall be addressed by the competent judge, the Ministry of Justice, or the Ministry of the Interior, to the Police Headquarters of Israel ; an application on the part of the State of Israel shall be addressed by the Police Headquarters to the Ministry of Justice or the Ministry of the Interior of the Republic of Austria.

(4) The judicial authorities of the requested State shall dispose of the application for provisional arrest in accordance with the laws of that State. The requesting State shall be informed immediately of the action taken on its application.

(5) Provisional arrest may be suspended at any time ; it shall in any event terminate if, within a period of forty-five days from the date of arrest, the request for extradition accompanied by the documents described in article 11 below has not been received by the requested State.

(6) Release shall not preclude rearrest and extradition if the request for extradition is received subsequently.

Article 11

(1) The request for extradition shall be transmitted through the diplomatic channel.

(2) The request shall be accompanied by the original or an authenticated copy of a warrant of arrest or other order having the same effect and issued by a judge, or of a judgement of conviction supported, where applicable, by documents indicating that the judgement is final.

(3) The offence for which extradition is requested, the time and place of its commission, its legal description and the statutory provisions governing it shall be stated as precisely as possible.

(4) There shall also be attached a copy of the text of the statutory provisions governing the offences and the penalties therefore and, wherever possible, a description of the person claimed and such other particulars as may serve to establish his identity and nationality. All requests on the part of the State of Israel shall be accompanied by the provisions of the Israel extradition laws under which the offence in question is extraditable.

(5) Where extradition is requested in connexion with pending proceedings, there shall also be attached the original record, or a certified copy, of the statements of witnesses or declarations of experts made on oath or otherwise to a judge. In such cases, extradition shall take place only if, in the opinion of the authorities of the requested State, the existing evidence would be sufficient to justify the institution of proceedings against the person claimed if the offence had been committed in the territory of that State.

(6) The documents mentioned in paragraphs (2) and (5) of this article shall be accepted as valid evidence in the procedure for examining the request for extradition, if they bear the signature of, or are accompanied by an attestation from, a judge or an official of the State where they were made and are authenticated by the official seal of the Minister for Justice or other Minister of that State.

Article 12

If the requested State considers that the documents supporting the request for extradition are not sufficient to enable it to render a decision, it shall apply for the submission of such additional information or evidence as is needed. A time-limit may be set for this purpose. Such time-limit shall not exceed sixty days if the person claimed is detained pending extradition.

Article 13

(1) If extradition is requested concurrently by a Contracting State and by one or more other States, either for the same offence or for different offences, the requested State shall be free to make its decision having regard to all the circumstances, in particular the relative seriousness and the place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

(2) Where extradition is granted to a third State, the request for extradition submitted by the Contracting State shall be deemed to be a request for consent to subsequent extradition to the latter State.

Article 14

(1) The requested State shall inform the requesting State as soon as possible of its decision regarding extradition. The reasons for any refusal, in whole or in part, shall be stated.

(2) If extradition is granted, the person to be extradited shall be sent by the authorities of the requested State at a time agreed upon by the Contracting States to a place so agreed upon ; if no place of surrender is agreed upon, the person to be extradited shall be surrendered at the place appointed by the diplomatic mission of the requesting State.

(3) Save in exceptional circumstances, the requesting State shall arrange for the person extradited to be taken over, either by its own agents or by the agents of a State of transit, within a period of forty-five days from the date on which it was informed that extradition had been granted. Upon the expiry of this period, the person to be extradited may be released ; if he is released, the requested State may refuse to rearrest him for the same offence with a view to his extradition.

(4) The requesting State shall inform the requested State as soon as possible that the State or States of transit have consented to the passage of the extradited person through their territories.

Article 15

The surrender of the person claimed may be postponed until such time as he has answered the demands of the law in the requested State. Nevertheless, the requested State may temporarily surrender the person claimed in order that he may be tried for the offence for which extradition has been granted, on the condition that he shall be returned to the requested State upon the completion of the proceedings.

Article 16

(1) The requested State shall seize such articles as may serve to prove the offence and any other articles, including any sum of money, acquired as a result of the offence and, if extradition is granted, shall deliver them to the requesting State.

(2) Wherever possible, the articles shall be delivered when the person claimed is surrendered. The articles shall be delivered notwithstanding the death or escape of of the person claimed.

(3) Nevertheless, such rights as may have been acquired in the said articles by the requested State or by third parties shall be reserved.

(4) The delivery of articles under the terms of this article shall be subject to their being returned to the requested State, if it so desires, upon the completion of the trial.

(5) For the purposes of pending criminal proceedings in the requested State, the delivery of articles may be postponed until the completion of the proceedings.

Article 17

(1) Transit through the territory of one Contracting State of a person being surrendered to the other Contracting State shall be granted on the same conditions as apply to extradition, upon a request transmitted through the diplomatic channel and accompanied by the documents mentioned in article 11 above.

(2) If the person concerned is sought by the State requested to grant transit, in order that he may answer under the laws of that State for an offence other than that for which transit was requested, transit shall be granted only if such offence is one for which the person cannot be extradited under the terms of this Convention.

Article 18

(1) A person who has been extradited shall not be proceeded against, sentenced, detained for the execution of a penalty, or subjected to any other restriction of his personal liberty for any offences committed prior to his surrender other than those covered by the decision granting extradition.

(2) The immunities referred to in paragraph (1) of this article shall cease :

1. If the requested State consents. A request for consent shall be submitted, accompanied by the documents described in article 11 above. Consent shall be given if the offence in respect of which consent is requested is an offence for which extradition is obligatory under the terms of this Convention ;
2. If, having been at liberty to leave the territory of the requesting State, the person who has been extradited has not done so within sixty days of his final discharge, or if he has returned to that territory after leaving it. Final discharge, within the meaning of this article, shall be deemed to include discharge accompanied by suspension of sentence.

(3) If the legal description of the offence charged is altered in the course of proceedings, the person who has been extradited shall be proceeded against or sentenced only in so far as the offence under its new description is extraditable.

(4) Save in the cases referred to in paragraph (2), sub-paragraph 2, of this article, a person who has been extradited shall not be re-extradited by the requesting State to a third State for offences committed prior to his surrender unless the requested State consents thereto. The request for such consent shall be accompanied by certified copies of the documents attached to the request for extradition made by the third State.

Article 19

(1) Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State.

(2) Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the requesting State.

Article 20

With the exception of the documents mentioned in article 18, paragraph (4), above, the documents to be transmitted or produced in pursuance of this Convention shall be drawn up in one of the official languages of the Contracting States and accompanied by a translation in French or English.

Article 21

(1) This Convention shall be subject to ratification ; the instruments of ratification shall be exchanged as soon as possible at Jerusalem.

(2) The Convention shall enter into force thirty days after the exchange of the instruments of ratification. It shall apply equally to offences committed before its entry into force.

(3) Either Contracting State may denounce this Convention by giving notice to the other Contracting State. Denunciation shall take effect one year after the date of receipt of the notice of denunciation by the other Contracting State.

IN WITNESS WHEREOF the respective plenipotentiaries have signed this Convention and have hereto affixed their seals.

DONE at Vienna on 10 October 1961, in the Hebrew, German and French languages, the three texts being equally authentic. Nevertheless, in the event of any discrepancy between the Hebrew and German texts of this Convention, the French text shall prevail.

For the State of Israel :

(Signed) Natan PELED

For the Republic of Austria :

(Signed) Bruno KREISKY

(Signed) Christian BRODA