

No. 12370

**CANADA
and
AUSTRIA**

**Extradition Agreement (with schedule). Signed at Ottawa
on 11 May 1967**

*Authentic texts: English, French and German.
Registered by Canada on 28 March 1973.*

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et
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**Convention d'extradition (avec annexe). Signée à Ottawa le
11 mai 1967**

*Textes authentiques: anglais, français et allemand.
Enregistrée par le Canada le 28 mars 1973.*

EXTRADITION AGREEMENT¹ BETWEEN CANADA AND THE REPUBLIC OF AUSTRIA

Canada and the Republic of Austria, desiring to promote the cause of justice by providing for the reciprocal extradition of fugitives from justice, have decided to conclude the following Extradition Agreement:

Article 1. The Contracting Parties undertake to deliver up to each other, in accordance with this Agreement, persons who, being accused (an “accused fugitive”) or convicted (a “convicted fugitive”) of an extradition offence committed in the territory of the one Party (the “requesting State”), shall be found within the territory of the other Party (the “requested State”), and duly committed for extradition in accordance with the laws of the requested State governing extradition procedure.

Article 2. For the purposes of this Agreement the territory of a State includes its territorial waters and vessels and aircraft registered in its territory, and an offence committed partly within the territory of a State shall be deemed to have been committed within its territory.

Article 3. An extradition offence for the purposes of this Agreement is an offence which is mentioned in the schedule and which constitutes an offence according to the law of the requesting and the requested State and which was committed after the coming into force of this Agreement provided, in the case of an accused or convicted fugitive, that such offence, at the time when it was committed, was punishable by a maximum period of at least one year’s imprisonment and in the case of a convicted fugitive that imprisonment for a period of at least four months was actually imposed.

Article 4. A fugitive shall not be extradited

1. if the act for which his extradition is sought was not punishable, at the time it was committed, by the law of the requesting and requested State;
2. if the act for which his extradition is sought constitutes an offence solely against military law;
3. if he has already been tried and discharged or punished in the requesting or requested State for the act for which his extradition is sought;
4. if he is under examination or trial in the requested State for the act for which his extradition is sought;
5. if, before the time set for his surrender, he has acquired exemption from prosecution or punishment by lapse of time or other lawful cause according to the law of the requesting or requested State for the act for which his extradition is sought;
6. on account of an offence for which he was convicted in contumaciam;

¹ Came into force on 30 August 1969, i. e., 30 days after the date of the exchange of instruments of ratification, which took place at Vienna on 31 July 1969, in accordance with article 23(1).

7. if in the opinion of the requested State,
- a) the act for which his extradition is sought is an offence of a political character,
 - b) the request for his extradition is being made with a view to prosecute or punish him for an offence of a political character, or
 - c) the request for his extradition is being made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinion or his position may be prejudiced for any of these reasons.

Article 5. Neither State shall be obliged to extradite its own citizens.

Article 6. If, under the law of the requesting State, the person sought is liable to the death penalty for the offence on which the request for his extradition is based, but the law of the requested State does not provide for the death penalty in a similar case, extradition may be refused.

Article 7. A request for the extradition of a fugitive shall be in writing and shall be communicated by a diplomatic officer of the requesting State to the Minister of Foreign Affairs of the requested State.

Article 8. The requesting State shall also submit to the requested State:

1. in the case of an accused fugitive, a warrant for his arrest for an offence mentioned in the Schedule issued by a competent authority of the requesting State, or a certified copy thereof, and such evidence, as according to the law of the requested State, subject to this Agreement, would justify his arrest and committal for trial if the act constituting the offence for which his extradition is sought had been committed there;
2. in the case of a convicted fugitive, a certificate or other judicial document drawn by a competent authority of the requesting State, or a certified copy thereof, proving that the fugitive has been convicted and sentenced for an offence mentioned in the schedule; and
3. in either case a description of the fugitive, a statement and particulars of the offence and the text of the enactment creating the offence and prescribing the punishment therefor;
4. a translation of any document submitted in accordance with this Agreement in the official language or one of the official languages of the requested State.

Article 9. Whether or not a request for extradition has been received, a competent authority in the requested State may issue a warrant for the apprehension and detention of a fugitive on a warrant of arrest issued in the requesting State, or on an information or complaint, and in either case on such evidence or after such proceedings as in the opinion of such authority would justify the issue of a warrant if the offence of which the fugitive is accused, or of which he is alleged to have been convicted, had been committed in the requested State.

Article 10. The fugitive will be brought before a competent authority who will commit the fugitive for extradition if

1. in the case of a convicted fugitive, such evidence is produced as would, according to the law of the requested State, subject to this Agreement, prove that he was so convicted, and

2. in the case of an accused fugitive, such evidence is produced as would according to the law of the requested State, subject to this Agreement, justify his committal for trial if the offence had been committed in the requested State.

Article 11. In extradition proceedings pursuant to this Agreement, the competent authorities of the requested State will admit as evidence

1. warrants or copies thereof, issued in the requesting State;
 2. sworn depositions or affirmations of witnesses taken in the requesting State in accordance with the law of that State, or copies thereof; and
 3. certificates of, or judicial documents stating the fact of a conviction and sentence or copies thereof, issued in the requesting State;
- if they are authenticated as provided in article 12.

Article 12. Papers required to be authenticated for the purposes of this Agreement shall be deemed to be duly authenticated

1. if authenticated in a manner for the time being authorized by the law of the requested State; or
2. if a warrant, deposition, affirmation, certificate or judicial document, or copy thereof, purports to be certified to be the original or true copy by a judge, magistrate or officer of the requesting State, and such warrant, deposition, affirmation, certificate or document or copy thereof is authenticated
 - a) by being sealed with the official seal of the Minister of Justice, or other Minister of the requesting State, or
 - b) by being certified by a consul of the requested State in the area of the requesting State where the papers were executed as having been properly taken in accordance with the law of the requesting State.

Article 13. The fugitive may be released and the extradition proceedings may be dismissed if

1. a request for his extradition is not received by the requested State within thirty days of his apprehension, or
2. the warrant, certificate or other document, or copy thereof, required by article 8 and sufficient evidence to warrant his extradition are not produced within forty-five days from the date of his apprehension, or within such further time as the requested State or in the case of Canada a competent authority, directs.

Article 14. The release of the fugitive or dismissal of the proceedings under article 13 shall not prevent extradition proceedings again being initiated if, subsequent to the time mentioned in that article, the documents or other evidence required thereby are produced.

Article 15. A fugitive shall not be extradited until after the expiration of fifteen days from the day of his committal for extradition, or if, according to the law of the requested State, proceedings are taken to test the validity of the committal, until after the decision is given in such proceedings.

Article 16. If extradition is granted the requested State shall cause the fugitive to be surrendered to the persons who are authorized by the requesting State to receive him and such persons may convey the fugitive within the jurisdiction of the requesting State.

Article 17. The requested State may postpone the surrender of a fugitive in order that he may be prosecuted and punished for an offence within the jurisdiction of the requested State.

Article 18. A fugitive who has not been conveyed out of the requested State within sixty days after his committal for extradition, or if proceedings are taken to test the validity of the committal within sixty days after the decision in such proceedings, may be released and the requested State may refuse to extradite him for the same offence.

Article 19. (1) When a request for extradition is granted, the requested State shall, so far as its law allows, hand over to the requesting State all articles (including sums of money):

- a) which may serve as proof of the offence; or
- b) which have been acquired by the fugitive as a result of the offence and are in his possession.

(2) If the articles in question are liable to seizure or confiscation in the territory of the requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.

(3) These provisions shall not prejudice the rights of the requested State or of any persons other than the fugitive. When these rights exist, the articles shall on request be returned to the requested State without charge as soon as possible after the end of the proceedings.

Article 20. (1) An extradited fugitive shall not be kept in custody or proceeded against in the requesting State for any offence committed or other matter arising before his extradition, except the offence for which he was extradited, nor shall he be extradited from the requesting State to a third state, until the expiration of thirty days after he has had an opportunity of leaving the requesting State.

(2) This article shall not apply to any offence in respect of which the requested State gives permission to the requesting State for prosecution or extradition.

Article 21. Where the requesting State seeks the extradition of a fugitive whose extradition is also sought by one or more other states, the requested State shall, subject to its obligations under agreements with the other states, give priority to the state that first requested extradition.

Article 22. Expenses incurred in the territory of the requested State by reason of extradition shall be borne by that State. However, the requesting State shall bear any expenses occasioned by being legally represented before the courts of the requested State and by conveying the fugitive from the territory of the requested State.

Article 23. (1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Vienna. The Agreement shall come into force thirty days after the date of the exchange of instruments of ratification.

(2) Either of the Contracting Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect six months after the receipt of the notice.

SCHEDULE

1. Murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Maliciously wounding or inflicting grievous bodily harm.
5. Assault occasioning actual bodily harm.
6. Rape.
7. Unlawful sexual intercourse with a girl under sixteen years of age.
8. Indecent assault.
9. Procuration.
10. Bigamy.
11. Kidnapping or false imprisonment.
12. Abduction.
13. Stealing, abandoning, exposing or unlawfully detaining a child.
14. Bribery, being the offering, giving or receiving of bribes.
15. Perjury, or subornation of perjury.
16. Arson.
17. (a) Counterfeiting or altering money, or uttering or bringing into circulation counterfeited or altered money.
(b) Knowingly and without lawful authority making or having in possession any instrument, tool or engine adapted and intended for the counterfeiting of money.
18. Forgery, or uttering what is forged.
19. Robbery.
20. Burglary, housebreaking or larceny.
21. Embezzlement.
22. Fraud by a bailee, banker, agent, factor or trustee, or by a director, member or public officer of any company; fraudulent conversion.
23. Obtaining money, valuable security or goods by false pretences.
24. Receiving any money, valuable security or other property knowing the same to have been stolen or unlawfully obtained.
25. Threats with intent to extort money or other things of value.
26. Malicious damage to property.
27. Offences against bankruptcy law.
28. Offences in connection with the traffic in dangerous drugs.
29. Any malicious act done with intent to endanger the safety of persons travelling or being upon a railway.
30. Piracy.
31. Sinking or destroying a vessel at sea.

32. Assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.
 33. Revolt by two or more persons on board a ship on the high seas against the authority of the master.
 34. Unlawful and wilful seizure of an aircraft.
 35. Unlawful and wilful acts that are intended or likely to damage an aircraft or endanger its occupants.
 36. Attempt or conspiracy to commit or participation in, any offence above mentioned.
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