

No. 15122

**AUSTRIA
and
HUNGARY**

**Treaty concerning extradition. Signed at Budapest on
25 February 1975**

Authentic texts: German and Hungarian.

Registered by Austria on 22 November 1976.

**AUTRICHE
et
HONGRIE**

Traité d'extradition. Signé à Budapest le 25 février 1975

Textes authentiques : allemand et hongrois.

Enregistré par l'Autriche le 22 novembre 1976.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE HUNGARIAN PEOPLE'S REPUBLIC CONCERNING EXTRADITION

The Federal President of the Republic of Austria and the Presidential Council of the Hungarian People's Republic, desiring to facilitate relations between the two States in legal matters, have agreed to conclude a Treaty concerning extradition and for that purpose have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Federal Minister for Foreign Affairs, Dr. Erich Bielka,

The Presidential Council of the Hungarian People's Republic: Minister for Foreign Affairs, Frigyes Puja,

who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1. (1) The Contracting States undertake to extradite to each other, upon request and subject to the provisions and conditions of this Treaty, persons who are being proceeded against in the requesting State for an offence or who are wanted for the carrying out of a sentence or preventive measures.

(2) Extradition shall not be granted for the carrying out of a sentence or preventive measures imposed on the basis of proceedings carried out in the absence of the person sought. Extradition for prosecution in a criminal case shall, however, be granted if the requesting State guarantees that proceedings will be reinstated in the presence of the person sought, if he is extradited.

Article 2. (1) Extradition shall be granted in respect of offences punishable under the laws of both Contracting States by imprisonment for a term of more than one year or by a more severe penalty.

(2) Where sentences involving deprivation of liberty or preventive measures have been imposed in connexion with one or more of the offences referred to in paragraph 1, extradition for the purpose of carrying them out shall be granted, provided the term of the sentences or measures still to be carried out is no less than four months.

(3) Where extradition is granted in accordance with paragraphs 1 and 2, it shall also be granted in respect of other offences punishable under the laws of both Contracting States and in respect of sentences involving deprivation of liberty or measures imposed for such offences, and in such cases the provisos specified in those paragraphs concerning the term of the sentences or measures shall not apply.

Article 3. Extradition shall not be granted:

1. if the offence for which extradition is requested is regarded by the requested State as a political offence or as an offence connected with a political offence;

¹ Came into force on 18 July 1976, i.e., the sixtieth day after the date of the exchange of the instruments of ratification, which took place at Vienna on 19 May 1976, in accordance with article 35 (1).

2. if the person sought has been granted asylum in the territory of the requested State;
3. if extradition would not be compatible with other obligations of the requested State under international law.

Article 4. Extradition shall not be granted if, in the view of the requested State, the offence is an offence under military law.

Article 5. Extradition shall not be granted if, in the view of the requested State, the offence constitutes a violation of customs, tax, State monopoly or foreign currency regulations or of regulations governing the export, import, transit and control of goods.

Article 6. Nationals of the requested State shall not be extradited.

Article 7. (1) Subject to the provisions of paragraph 2, extradition shall not be granted if the offence was committed in the territory of the requested State or is subject to the jurisdiction of the requested State because its vital interests have been prejudiced.

(2) Extradition shall be granted if extradition is being granted in connexion with another offence and if adjudication in the requesting State for all offences is expedient in the interest of ascertaining the truth, for reasons of awarding the punishment and carrying out the sentence or in the interest of the social rehabilitation of the extradited person.

Article 8. (1) Extradition shall not be granted if, in the requested State and in respect of the offence for which extradition is requested, the person sought has been

1. found guilty, or
2. acquitted or if the charge against him has been dismissed, except where the authority taking the decision lacked the requisite jurisdiction.

(2) Extradition shall also not be granted if the person sought has been found innocent or guilty in a third State of the offence for which extradition is requested and the sentence imposed has already been served or the preventive measures have already been carried out or if the carrying out of the sentence or measures is barred by the statute of limitations under the law of the third State.

Article 9. Extradition shall not be granted if prosecution or the carrying out of the sentence or preventive measures is barred by the statute of limitations of the requesting State or would be barred by the statute of limitations of the requested State.

Article 10. If the conditions for extradition under this Treaty are met, extradition shall not be precluded by an amnesty proclaimed in the requested State.

Article 11. The obligation to extradite shall not be affected by the absence of an application or authorization which may be required under the law of the requested State.

Article 12. If the offence is punishable by the death penalty in the requesting State but not in the requested State, the requesting State may impose or carry out a sentence involving only deprivation of liberty but not the death penalty.

Article 13. An extradited person shall not be tried in the requesting State by a court that has been established only provisionally or in exceptional circumstances. Extradition shall not be granted for the carrying out of a sentence or preventive measures imposed by such a court.

Article 14. Requests for extradition and re-extradition shall be made in writing. Correspondence relating to matters of extradition and re-extradition shall be conducted between the Federal Minister for Justice of the Republic of Austria and the Ministry of Justice of the Hungarian People's Republic. The use of the diplomatic channel shall not be excluded thereby.

Article 15. (1) The request for extradition shall be accompanied by a warrant or other document having the same effect or by a copy of an enforceable decision. These documents must bear the signature of a judge. Duly authenticated copies of such documents may be furnished instead of the originals.

(2) The following shall also be attached, to the extent that they are not included in the aforesaid documents:

1. a statement of the offence with an indication of the time and place of its commission;
2. a legal description of the offence and a copy of the applicable regulations or regulations applied;
3. in the case of a request for extradition for the carrying out of a sentence, documents evidencing the enforceability of the sentence;
4. as accurate a description as possible of the person sought for the purpose of establishing his identity and nationality.

Article 16. The supporting documents shall be submitted in the language of the requesting State. Translations in the language of the requested State shall not be required.

Article 17. If the requested State considers that the information and supporting documents furnished are not sufficient, it shall request the necessary additional information to be furnished within such time as it specifies. This time-limit may be extended upon submission of a well-founded request. In the absence of such supplementary information the request for extradition shall be dealt with on the basis of the available information and supporting documents.

Article 18. If the requesting State submits a request for extradition in conformity with the provisions of this Treaty and provides good reason for believing that the person sought is in the territory of the requested State, the latter shall immediately undertake the necessary investigation. If necessary, the requested State shall detain the person sought or take other measures to prevent him from absconding.

Article 19. (1) In an emergency the requesting State may request the provisional arrest of the person sought. The requested State shall decide in accordance with its law whether to order provisional arrest or other measures to prevent the person sought from absconding.

(2) The request for provisional arrest shall state that one of the documents referred to in article 15 exists and that a request for extradition is going to be submitted. It shall also provide a brief description of the offence with details of the time when and place where it was committed and an indication of the penalty involved or

the sentence or preventive measures to be carried out, as well as information for establishing the identity and nationality of the person sought.

(3) A request for provisional arrest shall be sent to the requested State by post or telegraph or in some other written form. The requesting State shall be informed without delay of the response to its request.

(4) Provisional arrest may be terminated if the extradition request and the documents referred to in article 15 are not received within 20 days from the arrest. Provisional arrest shall not in any event exceed 40 days from the time of arrest. Provisional arrest may, however, be terminated at any time if the requested State takes whatever action it considers necessary to prevent the person sought from absconding.

(5) The termination of provisional arrest shall not preclude re-arrest and extradition if a request for extradition is received subsequently.

Article 20. (1) If the competent authorities of a Contracting State learn that a person whose extradition might be requested by another Contracting State is in the territory of the former State, they may place him under provisional arrest pending extradition. The other Contracting State shall be notified without delay in the manner specified in article 14 of the time of arrest and the place of detention.

(2) The Contracting State receiving the information referred to in paragraph 1 shall state without delay whether it intends to submit a request for extradition. The provisional arrest shall be terminated if notice to this effect is not received within 15 days from the date of arrest or if notice is received that extradition will not be requested. The request for extradition must be sent within the 20-day period specified in article 19, paragraph 4. Termination of provisional arrest shall not preclude re-arrest and extradition if a request for extradition is received subsequently.

Article 21. (1) The requested State shall take a decision on extradition as soon as possible and shall inform the requesting State of its decision. Reasons must be given for any total or partial rejection of the request.

(2) If the request for extradition is granted, the requested State shall determine the time and place for handing over the person sought and shall inform the requesting State thereof. In the case of railway transport, he shall be handed over at the stations of Hegyeshalom, Sopron, Wulkaprodersdorf, Mattersburg, Szentgotthárd or Jennersdorf, and, in the case of road transport, at the frontier crossing points of Nickelsdorf-Hegyeshalom, Klingenbach-Sopron or Heiligenkreuz i.L.-Rábafüzes. The competent authorities of the Contracting States may agree to establish other frontier crossing points for this purpose. Air transport of the person sought shall not thereby be excluded.

(3) If the person sought is not taken over by the requesting State in accordance with the arrangements set forth in paragraph 2, although the requested State is ready to hand him over, and if he is not taken over within the next 14 days, he shall be released from arrest and the request for extradition shall be deemed to have lapsed. The requested State may then refuse to extradite him for the same offence.

(4) If a Contracting State is prevented by circumstances beyond its control from handing or taking over the person sought, it shall notify the other Contracting State accordingly. The requested State shall set another date and, if necessary, another place for the transfer as soon as possible. In this case paragraph 3 shall also apply.

Article 22. Escort personnel, assigned to conduct a person sought into the territory of the other Contracting State or to fetch him from that territory, shall be allowed to wear their uniforms, bear their service weapons and bring with them the necessary items of equipment into the territory of the other Contracting State. Weapons shall, however, be used only in self-defence.

Article 23. (1) If requests are received from a Contracting State and from a third State for the extradition of the same person, the requested State shall decide which State has precedence. In so doing it shall have regard to all the circumstances and, in particular, to the relative seriousness of the offences, the places where the offences were committed, the respective dates on which the requests were received, the nationality of the person sought, the possibility of subsequent extradition and its treaty obligations vis-à-vis the third State.

(2) If a Contracting State and a third State request another Contracting State for the extradition of a person and if the request of the third State is given precedence, the requested State shall simultaneously inform the other Contracting State of its decision with regard to the request for extradition and of the extent to which it consents to the possible extradition from the third State to the other Contracting State.

Article 24. (1) The requested State may, after granting the extradition, postpone the surrender of the person sought in order that proceedings for another offence may be instituted in its courts or in order that a sentence of imprisonment or preventive measures handed down by its court for another offence may be carried out.

(2) If the surrender is postponed, the requested State may temporarily hand over the person sought at the request of the requesting State, in order that urgent legal proceedings may be brought against him, in particular such as relate to the main offence. Details of the proceedings should be presented with the request. The surrendered person shall be returned without delay to the requested State after completion of the proceedings or at its request.

(3) The requesting State shall keep the temporarily surrendered person in custody until he is returned. The time spent in custody shall count towards the sentence handed down or to be handed down in the requested State.

Article 25. (1) Where extradition is granted, the requested State shall also hand over voluntarily property:

1. which may serve as evidence; or
2. which the person sought acquired as a result of his offence or in compensation therefor.

(2) The property shall, if possible, be handed over at the same time as the person sought. It shall be handed over even if the extradition granted cannot be carried out owing to the death or absence of the person sought.

(3) Property that is subject to seizure or confiscation or is required for criminal proceedings in the requested State may be retained for the duration of the proceedings or handed over on condition that it is returned.

(4) In every case the rights of the requested State or third Parties with respect to the property shall be reserved. Where these rights exist, the property shall be returned to the requested State as soon as possible and without charge after the com-

pletion of the proceedings in the requesting State. If such rights were to be impaired by the transfer of the property, the transfer shall not be granted.

(5) In the case referred to in paragraph 1, the requested State shall, when reporting the seizure of property, also indicate whether the person sought agrees to the direct return of the property to the injured Party. The requesting State shall inform the requested State as soon as possible whether it waives the handing over of the property on the condition that it is delivered to the injured Party or his authorized representative upon production of a certificate issued by its competent judicial authority.

Article 26. (1) The extradited person shall not be proceeded against, sentenced or deprived of his liberty in any way, in particular through arrest or preventive measures, for any offence committed prior to his surrender but not covered by the extradition order or for any other reason arising before his surrender.

(2) The limitations under paragraph 1 shall not apply if

1. the requested State consents to the proceedings or to the carrying out of a sentence or preventive measures. The request for consent shall be submitted together with the documents referred to in article 15 and an official record of any statements made by the extradited person. Hearings shall be held before judicial authorities as prescribed by law. The extradited person must be informed of the meaning and purpose of the hearings. Consent shall be given if the offence in respect of which it is requested entails the obligation to grant extradition under this Treaty; or
2. the extradited person remains more than 30 days after his final discharge in the requesting State, even though free and able to leave, or if he returns to that State after having left it; conditional discharge without an order restricting the freedom of movement of the extradited person shall be assimilated to final discharge.

(3) The requesting State may take whatever action it deems necessary under its law to remove the extradited person from its territory or to interrupt or suspend prescription.

(4) Within the time-limit referred to in paragraph 2, subparagraph 2, an extradited person shall be allowed to leave the territory of the requesting State, notwithstanding any internal regulations of the requesting State to the contrary, unless he has committed another offence after his surrender. In that case, the time-limit referred to in paragraph 2, subparagraph 2, shall not begin until he has been finally discharged also in respect of the proceedings instituted in connexion with that offence.

Article 27. When the description of the offence charged is altered in the course of proceedings in the requesting State from the description in the extradition proceedings, the extradited person shall be proceeded against or sentenced only in so far as the offence under its new description is shown to be an offence which would allow extradition.

Article 28. (1) An extradited person may not be re-extradited to a third State for an offence committed prior to his surrender except with the consent of the requested State. Requests for such consent shall be accompanied by the original extradition documents of the third State or duly authenticated copies thereof and an official record of any statements made by the extradited person. Hearings shall be held

before a competent judicial authority as prescribed by law. The extradited person must be informed of the meaning and purpose of the hearings.

(2) Consent to re-extradition shall not be required if one of the conditions referred to in article 26, paragraph 2, subparagraph 2, is fulfilled.

Article 29. (1) Re-extradition from a third State to a Contracting State through the territory of another Contracting State shall be granted in the same manner as prescribed for extradition. Except as otherwise provided below, the provisions of this Treaty concerning extradition shall also apply to re-extradition.

(2) Re-extradition may be refused if the requested State has charges of its own to bring against the person concerned or if re-extradition is liable to prejudice its vital interests.

(3) The State requested to grant re-extradition shall hold the person in custody during the period of re-extradition. It may not institute proceedings against him or impose any punishment or preventive measures for offences committed by him prior to re-extradition except with the consent of the extraditing State.

(4) In the case of re-extradition by air without intermediate stops, the express consent of the Contracting State over whose territory the flight is to be made shall not be required. That State shall be notified in advance by the requesting State that one of the documents referred to in article 15, paragraph 1, is available, that there is no bar to transit within the meaning of this Treaty and, in particular, that the person to be transported is not a national of the State over whose territory the flight is to be made. If an emergency landing is made in the territory of the State over whose territory the flight is to proceed, such notification shall have the same effects as the request for provisional arrest provided for in article 19.

Article 30. The Contracting States shall waive reimbursement for costs arising in their territory in connexion with extradition, temporary surrender (article 24, paragraph 2) or the handing over of property (article 25). However, the requesting State shall bear the costs of re-extradition.

Article 31. A requesting State shall, if asked by a requested State, inform the latter of the results of any proceedings against the extradited person by enclosing the original, a certified copy or a photocopy of the final decision.

Article 32. Except where this Treaty provides otherwise, the procedure with regard to extradition and provisional arrest in the territory of the requested State shall be governed solely by the law of that State.

Article 33. For the purposes of this Treaty the expression “preventive measures” means an order involving deprivation of liberty handed down by a criminal court in addition to or in lieu of a prison sentence. If the term of the preventive measures is not specified, for the purposes of this Treaty it shall be the maximum period allowed for such measures under the law of the requesting State.

Article 34. This Treaty shall be ratified; the instruments of ratification shall be exchanged at Vienna.

Article 35. (1) This Treaty shall enter into force on the sixtieth day after the exchange of instruments of ratification.

(2) This Treaty is concluded for a term of five years and shall thereafter remain in force unless one of the Contracting States has given notice of termination in

writing to the other Contracting State through the diplomatic channel six months before the expiry of the five-year term.

(3) If the Treaty has not been terminated in accordance with paragraph 2, it shall remain in force indefinitely unless one of the Contracting States gives notice of termination in writing to the other Contracting State through the diplomatic channel; in the latter case it shall remain in force for one year after notice of termination.

IN WITNESS WHEREOF the plenipotentiaries of both Contracting States have signed this Treaty and have thereto affixed their seals.

DONE at Budapest, on 25 February 1975, in duplicate in German and Hungarian, both texts being equally authentic.

For Republic of Austria:

E. BIELKA

For the Hungarian People's Republic

PUJA FRIGYES
