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**FRANCE
and
AUSTRIA**

Extradition Convention. Signed at Paris on 9 July 1975

Authentic texts: French and German.

Registered by France on 27 February 1977.

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Convention d'extradition. Signée à Paris le 9 juillet 1975

Textes authentiques : français et allemand.

Enregistrée par la France le 27 février 1977.

[TRANSLATION — TRADUCTION]

EXTRADITION CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE REPUBLIC OF AUSTRIA

The President of the French Republic and the Federal President of the Republic of Austria,

Desiring to regulate, by agreement, matters relating to the extradition of offenders, have appointed as plenipotentiaries:

The President of the French Republic: Mr. Jean Lecanuet, Keeper of the Seals, Minister of Justice;

The Federal President of the Republic of Austria: Mr. Christian Broda, Federal Minister of Justice;

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

Article 1. The High Contracting Parties undertake to surrender to each other, subject to the rules and conditions laid down in the following articles, all persons in the territory of either State who are the subject of proceedings or have been sentenced by the judicial authorities of the other State.

Article 2. 1. The High Contracting Parties shall not extradite their own nationals or any other persons whose extradition is not authorized by the provisions of this Convention.

2. Nevertheless, in the event that extradition is refused on the grounds that the person whose extradition is requested is a national of the requested State, that State shall undertake to consider, where it has jurisdiction over the person concerned, the possibility of instituting proceedings against that person if he has committed, in the territory of the requesting State, an offence which is punishable as a criminal or correctional offence in the two States.

Article 3. 1. Extradition shall be granted in respect of:

- (a) an act or acts which, under the laws of the High Contracting Parties, constitute a criminal or correctional offence punishable under those laws by a penalty entailing deprivation of liberty or a detention order entailing deprivation of liberty for a maximum period of at least one year, or by more severe penalty;
- (b) sentences imposed by the courts of the requesting State for criminal or correctional offences of the kind referred to in subparagraph (a) and calling for a penalty entailing deprivation of liberty or a detention order entailing deprivation of liberty when the duration of the penalty or of the detention order is at least three months;
- (c) sentences for offences punishable under the laws of the High Contracting Parties calling for penalties entailing deprivation of liberty or detention orders entailing deprivation of liberty for a total period of at least three months, provided that at least one of the offences committed is punishable under the laws of the High

¹ Came into force on 25 January 1977, i.e. 60 days after the date of the exchange of the instruments of ratification, which took place at Vienna on 26 November 1976, in accordance with article 25 (1).

Contracting Parties by a penalty entailing deprivation of liberty or a detention order entailing deprivation of liberty for a period of at least one year.

2. For the purposes of this Convention the term "detention order" means any order involving deprivation of liberty which has been made in addition to or instead of a prison sentence.

3. In the application of this article, the principle of non-retroactivity of a more severe penal law shall be respected.

Article 4. 1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested State as a political offence or as an offence under ordinary law committed for a primarily political purpose.

2. An attempt on the life of a head of State or of a member of his family shall not be regarded as a political offence.

3. Extradition shall not be granted if the requesting State has substantial grounds for believing that the request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

Article 5. Extradition for military offences not constituting offences under ordinary law shall be excluded from the scope of this Convention.

Article 6. Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connexion with taxes, duties, customs, State monopolies and foreign exchange only when so decided by a special Agreement.

Article 7. Extradition shall not be granted if the offence for which it is requested:

- (a) was committed in the requested State;
- (b) is the subject of proceedings in the requested State or has been the subject of a judgement in that State;
- (c) was committed outside the territory of the requesting State by a person not a national of that State where the law of the requested State does not allow prosecution for the same category of offence when committed outside its territory by an alien.

Article 8. Extradition shall not be granted:

- (a) if prosecution or punishment is barred by lapse of time under the laws of either State at the time when the request is received by the requested State;
- (b) if amnesty has been granted in the requesting State.

Article 9. Extradition may be refused if the offence concerned is punishable by death under the law of only one of the two States.

Article 10. 1. The request for extradition shall be transmitted through the diplomatic channel.

2. It shall be accompanied by the original or an authenticated copy of the final sentence or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State.

3. The circumstances concerning the offence for which the extradition is requested, the time and place at which it was committed, the legal description, and ref-

erences to the relevant legal provisions shall be set out as accurately as possible. The request shall also be accompanied by a copy of the relevant enactments and, as appropriate, by a copy of the documents establishing the enforceability of the sentence. A description of the person claimed and any information which may serve to establish his identity and nationality shall, as far as possible, be provided.

Article 11. 1. At the request of the judicial authorities of the requesting State the requested State may, in accordance with its law, provisionally arrest the person sought.

2. The request for provisional arrest shall be transmitted to the competent authorities of the requested State, either directly by post or telegraph or by any other means constituting a written record. It shall mention the existence of one of the documents referred to in article 10, paragraph 2, and give notice of the intention to request extradition. It shall specify the offence for which extradition is requested, and when and where it was committed, and give as detailed a description as possible of the person sought. The requesting authority shall be informed without delay of the action taken in response to its request.

Article 12. 1. The requested State may terminate the provisional arrest if, within a period of twenty days after the arrest, it has not received the request for extradition and the documents mentioned in article 10. At the instance of the requesting State, that period may be extended to forty days if special circumstances so require. If the request for provisional arrest is made by an authority outside Europe, the period shall be two months.

2. Release shall not prevent re-arrest and extradition if the request for extradition is received later.

Article 13. When supplementary information is essential to the requested State in order to ensure that the conditions laid down in this Convention are fulfilled, that State, if it believes that the omission can be rectified, shall so advise the requesting State through the diplomatic channel. A time-limit may be set by the requested State for the provision of such information.

Article 14. 1. If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested State shall make its decision independently, having regard to all the circumstances and especially the possibility of subsequent extradition as between the requesting States, the respective dates of the requests and the relative seriousness and the place of commission of the offences.

2. At the same time, the requested State shall, if necessary, authorize the requesting State to surrender the person whose extradition has been granted to it to the third State which made the concurrent request.

3. When extradition is granted to a third State, the extradition request of the requesting State shall be considered by the requested State as a request for authorization of re-extradition by the third State to the requesting State.

Article 15. 1. The requested State shall inform the requesting State through the diplomatic channel of its decision with regard to extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the extradition is granted, the requested Party shall inform the requesting Party of the place and date of the surrender of the person claimed and of the length of time for which the person was detained.

4. Upon a request submitted in good time by one of them, the High Contracting Parties may, where the circumstances so require, fix by agreement another time and, where necessary, another place for the surrender of the person claimed.

5. If the requesting Party does not take over the person at the place and time prescribed in accordance with paragraph 3 or 4 of this article, he shall be released after a period of eight days; if the requesting Party requests an extension and states its reasons therefor, the period may be extended to fifteen days. The person released may not be claimed again for the same offences.

6. Where necessary, the communications required for the application of paragraphs 4 and 5 of this article may be transmitted by the means provided for in article 11, paragraph 2, of this Convention.

7. The provisions of this article shall also apply in the case of transfer by air.

Article 16. 1. If the person sought is the subject of proceedings or has been sentenced in the requested State for an offence other than that giving rise to the request for extradition, the latter State shall none the less take a decision on the request and inform the requesting State of its decision regarding extradition, in the manner prescribed in article 15, paragraphs 1 and 2. If the request is agreed to, however, the surrender of the accused person shall be deferred until the requirements of justice have been satisfied in the requested State.

2. At the instance of the requesting State, the person claimed may be handed over temporarily in order to appear before the judicial authorities of the requesting State, on the express condition that, whatever his nationality, he shall be kept in custody and returned once those authorities have rendered their judgement.

Article 17. 1. A person who has been extradited may not be the subject of proceedings or an after-trial judgement or be detained for the purpose of serving a sentence or complying with a detention order, or subjected to any restriction of his personal liberty in respect of an offence committed prior to his surrender other than that which has given rise to the extradition, except in the following cases:

- (a) when the requested State consents; to this end, the requesting State shall submit a request, accompanied by the documents referred to in article 10, paragraph 2, and by a legal record reproducing any statements by the extradited person on the extension of the extradition and mentioning the opportunity given to him to submit a memorandum in his own defence to the authorities of the requested State;
- (b) when the extradited person, having had the opportunity to leave the territory of the requesting State, has not done so within 30 days of his final release or has returned to that territory voluntarily after leaving it.

2. The requesting State may, however, take the necessary steps either for expulsion from the territory, if necessary, or for suspension of the time-limit or for the compilation of the documents necessary for the submission of a request for extension of the extradition.

3. If the designation of the offence is altered in the course of the proceedings, the person extradited may be tried or judged only in so far as the factors constituting the newly designated offence would provide grounds for extradition.

Article 18. Except in cases where the extradited person remains in or is returned to the territory of the requesting State in the circumstances described in article 17, paragraph 1 (b), the consent of the requested State shall be required for the handing over by the requesting State to a third State of the person surrendered to it. To that

end, and save as provided in article 14, paragraph 2, the requesting State shall transmit to the requested State a request accompanied by copies of the documents produced by the third State. It shall also transmit a legal record reproducing any statements by the extradited person on his re-extradition by the requesting State to the third State.

Article 19. 1. Where there are grounds for extradition, any articles:

- (a) which may serve as evidence;
 - (b) which are associated with the offence;
 - (c) which were acquired in exchange for articles associated with the offence,
- shall be handed over to the requesting State if found in the territory of the requested State.

2. The articles may be handed over even if extradition cannot be carried out because of the escape or death of the person claimed.

3. However, any rights which the requested State or third Parties may have acquired in the said articles shall be preserved. When such rights exist, the articles shall be returned without charge to the requested State as soon as possible after completion of the proceedings in the requesting State.

4. The requested State may keep the articles temporarily if it considers them necessary for the purposes of criminal proceedings. It may also release them for the same purposes on condition that they are returned. In such cases, it shall, in turn, undertake to send them back as soon as possible.

5. The requested State shall not be required to return the articles if its authorities have ordered the confiscation or destruction of such articles.

Article 20. 1. Transit through the territory of one of the High Contracting Parties shall be authorized on submission of a request through the diplomatic channel, provided that the offence is such as to give grounds for extradition under this Convention. However, the provisions relating to the magnitude of sentences shall be disregarded. Transit of nationals of the requested State shall not be authorized.

2. The State requested to authorize transit shall not be required to authorize such transit if the person concerned is the subject of proceedings or has been given a final sentence in the territory of that State.

3. Subject to the provisions of paragraph 4 of this article, the documents provided for in article 10, paragraph 2, must be produced.

4. If air transport is used, the following provisions shall apply:

- (a) When no intermediate landing is scheduled, the requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in article 10, paragraph 2, exists; in the case of an unscheduled landing, such notification shall produce the same effects as the request for provisional arrest referred to in article 11, and the requesting State shall submit a formal request for transit.
- (b) When an intermediate landing is scheduled, the requesting State shall submit a formal request for transit.

Article 21. 1. Expenses incurred by reason of the extradition procedure in the territory of the requested State shall be borne by that State. The expenses of air transport effected in application of article 15, paragraph 7, shall, however, be borne by the requesting State. In the event of extradition from a territory outside Europe,

the expenses incurred between that territory and the European territory of the requested State shall be borne by the requesting State.

2. Expenses incurred by reason of transit in the territory of the State requested to authorize transit shall be borne by the requesting State.

Article 22. The documents to be produced in application of this Convention shall be drawn up in the language of the requesting State.

Article 23. 1. The High Contracting Parties may arrange, by agreement, for representatives of the Ministry of Foreign Affairs and of the Ministry of Justice of each State to meet with a view to resolving any difficulties arising in connexion with the application of this Convention.

2. If such a meeting does not result in an agreement within six months, each of the High Contracting Parties shall appoint an arbitrator within a period of three months. If these two arbitrators are unable to reach agreement they shall appoint a third arbitrator, who shall have the casting vote.

3. If agreement cannot be reached on the choice of the third arbitrator the latter shall, at the request of one of the High Contracting Parties, be appointed by the President of the International Court of Justice.

Article 24. 1. The Extradition Convention of 13 November 1855, the Additional Convention of 12 February 1869 and the other bilateral Agreements between France and Austria relating to extradition shall be abrogated.

2. This Convention shall also apply to offences committed prior to its entry into force.

Article 25. 1. This Convention shall be ratified and shall enter into force sixty days after the exchange of the instruments of ratification, which shall take place at Vienna as soon as possible.

2. It shall remain in force until one year has elapsed from the date on which one of the High Contracting Parties notifies the other of its wish to terminate the Convention.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Convention and have affixed their seals thereto.

DONE at Paris on 9 July 1975, in duplicate in the French and German languages, both texts being equally authentic.

For the President of the French Republic:

[Signed]

JEAN LECANUET

For the Federal President of the Republic of Austria:

[Signed]

CHRISTIAN BRODA