

No. 20199

**FEDERAL REPUBLIC OF GERMANY
and
CANADA**

**Treaty concerning extradition (with schedule). Signed at
Ottawa on 11 July 1977**

Authentic texts: German, English and French.

Registered by the Federal Republic of Germany on 31 July 1981.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
CANADA**

**Traité d'extradition (avec annexe). Signé à Ottawa le 11 juillet
1977**

Textes authentiques : allemand, anglais et français.

Enregistré par la République fédérale d'Allemagne le 31 juillet 1981.

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND CANADA CONCERNING EXTRADITION

The Federal Republic of Germany and Canada,
Desiring to regulate by mutual agreement their relations in the field of extradition,
Have agreed as follows:

Article I. UNDERTAKING TO EXTRADITE

(1) The Contracting Parties undertake, subject to the provisions and conditions prescribed in this treaty, to extradite to each other any person found within the territory of the requested state who is subject to prosecution by a competent authority of the requesting state for, or convicted by such an authority of, an offence committed within the territory of the requesting state and who is claimed by that authority for the purpose of prosecution or for the purpose of carrying out a sentence.

(2) Where the requesting state asserts jurisdiction in respect of an offence committed outside its territory the requested state shall grant extradition where in a similar case it would have jurisdiction.

Article II. EXTRADITABLE OFFENCES

(1) Extradition shall be granted only in respect of any act or omission that constitutes an offence set out in the Schedule, provided that such act or omission is a criminal offence punishable under the law of both Contracting Parties.

(2) Extradition shall only be granted in respect of an offence for the purpose of

- (a) Prosecution, where the offence is punishable under the law of both Contracting Parties by deprivation of liberty for a maximum period exceeding one year; or
- (b) Carrying out a sentence, where deprivation of liberty of at least six months remains to be served or, if more than one sentence is to be carried out, where deprivation of liberty of at least six months in the aggregate remains to be served.

(3) Subject to paragraph (2) extradition shall also be granted in respect of any attempt to commit, conspiracy to commit or participation in an offence.

(4) Where extradition is granted in respect of any offence, paragraph (2) shall not apply to any other offence for which extradition is requested at the same time.

(5) The fact that an offence is described differently by the law of the Contracting Parties shall be irrelevant if the act or omission can be subsumed within the substance of any offence set out in the Schedule.

Article III. POLITICAL OFFENCES

(1) Extradition may be refused if

- (a) The offence in respect of which it is requested is considered by the requested state to be a political offence; or
- (b) The requested state considers that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race,

¹ Came into force on 30 September 1979, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 31 August 1979, in accordance with article XXXII (1) and (2).

religion, nationality or political opinion or that his position would be prejudiced for any of those reasons.

(2) For the purpose of this treaty, a murder, kidnapping or other wilful assault on the life or physical integrity of a person in relation to whom the Contracting Parties have or the requesting state has a duty according to international law to give special protection shall be deemed not to be a political offence.

Article IV. MILITARY OFFENCES

Extradition shall not be granted if the offence in respect of which it is requested is considered by the requested state to be a purely military offence.

Article V. EXTRADITION OF NATIONALS

(1) Neither of the Contracting Parties shall be bound to extradite its own nationals.

(2) The requested state shall suspend any proceedings for the naturalization of the person claimed until a decision on the request for extradition has been reached and, if extradition is granted, until his surrender.

(3) If a request for extradition is refused only on the ground that the person claimed is a national of the requested state, that state shall, if asked to do so by the requesting state, take all possible measures in accordance with its own law to prosecute the person claimed. For this purpose, the files, documents and exhibits relating to the offence shall be transmitted to that state. All expenses incurred in connection with such prosecution shall be borne by the requested state. The requesting state shall be informed of the result of the prosecution.

Article VI. "NE BIS IN IDEM"

(1) Extradition shall not be granted if

- (a) The person claimed has already been tried and acquitted or convicted by the competent authorities of the requested state for the offence in respect of which his extradition is requested; or
- (b) Criminal proceedings initiated against the person claimed for the offence in respect of which extradition is requested have been discontinued finally by the competent authorities of the requested state, the person claimed having complied with the conditions imposed on him.

(2) Extradition may be refused, if the person claimed has already been tried and acquitted or convicted by the competent authorities of a third state for the offence in respect of which his extradition is requested.

Article VII. LAPSE OF TIME

Extradition shall be granted notwithstanding that prosecution for the offence or carrying out of the sentence would be barred by lapse of time according to the law of the requested state.

Article VIII. PROSECUTION IN THE REQUESTED STATE

(1) Extradition may be refused if the person claimed is under examination or trial in the requested state for the offence in respect of which his extradition is requested.

(2) Subject to Article VI (1) (b) a decision by the competent authorities of the requested state not to initiate or to stop proceedings against the person claimed in respect of an offence shall not be a reason to refuse extradition in respect of the same offence.

Article IX. AMNESTY

An amnesty enacted by the requested state shall not affect the obligation to extradite if the offence for which extradition is requested was not committed within the jurisdiction of the requested state.

Article X. COMPLAINT AND AUTHORIZATION

If a complaint by or on behalf of the person injured by an offence or an authorization to prosecute is required by the law of the requested state, the absence of such a complaint or authorization shall not affect the obligation to extradite.

Article XI. CAPITAL PUNISHMENT

Extradition may be refused where the offence for which extradition is requested is punishable by death under the law of the requesting state and the law of the requested state does not permit such a punishment for that offence, unless the requesting state gives such assurances as the requested state considers sufficient that the death penalty shall not be imposed or, if imposed, shall not be executed.

Article XII. CONVICTION BY REASON OF CONTUMACY

Where the person claimed has been convicted of an offence by reason of contumacy, extradition may be refused unless the requesting state gives such assurances as the requested state considers sufficient that the person claimed will be entitled to have the conviction on which the request for extradition is based reviewed by a court in points of fact and law.

Article XIII. CHANNEL OF COMMUNICATION

A request for extradition and any subsequent correspondence shall be communicated through the diplomatic channel.

Article XIV. EXTRADITION DOCUMENTS

- (1) The request for extradition shall be in writing and shall be accompanied by
 - (a) All available information concerning the description, identity and nationality of the person claimed;
 - (b) A description of the offence in respect of which extradition is requested including the date and place of its commission unless this information appears in the warrant of arrest or in the sentence; and
 - (c) The text of all provisions of the law of the requesting state applicable to the offence.
- (2) A request for extradition for the purpose of prosecution relating to a person charged with an offence or convicted by reason of contumacy shall, in addition to the documents required by paragraph (1), be accompanied by
 - (a) A warrant of arrest issued by a judge of the requesting state; and
 - (b) Such evidence as, according to the law of the requested state, would justify the arrest and committal for trial of the person claimed if the offence had been committed in the requested state.

(3) A request for extradition for the purpose of carrying out a sentence shall, in addition to the documents required by paragraph (1), be accompanied by a copy of the judgment and by confirmation that it has final and binding effect and

- (a) If the judgment covers only the conviction, a warrant of arrest issued by a judge of the requesting state; or
- (b) If the judgment covers both conviction and sentence, confirmation that the sentence may be carried out and a statement showing how much of the sentence has not been served.

(4) A statement on oath or affirmation, a deposition or any other statement which satisfies the requirements of the law of the requesting state shall be admissible as evidence in extradition proceedings in the requested state.

Article XV. FORM OF EVIDENCE

The documents required under Article XIV or copies thereof shall be admitted in evidence in extradition proceedings in the requested state if signed by a competent judge or officer and sealed with the seal of the Federal Minister of Justice of the requesting state. Any such document that purports to be so signed and sealed shall be deemed to be duly certified and authenticated by the person or authority competent to do so.

Article XVI. INSUFFICIENT EVIDENCE

If extradition is not granted because of insufficient evidence, the person claimed may be discharged from custody by the requested state, without prejudice to the right of the requesting state to submit a further request for extradition in respect of the same offence together with additional evidence.

Article XVII. PROVISIONAL ARREST

(1) The competent authorities of the requesting state may request the provisional arrest of the person claimed either through the diplomatic channel or the facilities of the International Criminal Police Organization (Interpol). Where a request for provisional arrest of the person claimed is made through the facilities of the International Criminal Police Organization (Interpol), the requested state shall be informed through the diplomatic channel.

(2) The request for provisional arrest shall include

- (a) A statement that it is intended to request extradition;
- (b) All available information concerning the description, identity and nationality of the person claimed;
- (c) A description of the facts surrounding the offence;
- (d) A statement that there exists in the requesting state a warrant for the arrest of, or a sentence against the person claimed; and
- (e) Any available information that will assist in apprehending the person claimed.

(3) The requested state shall inform the requesting state when the person claimed has been apprehended.

(4) The requesting state shall have forty-five days from the date of the apprehension of the person claimed to make the request for extradition.

(5) If the request for extradition has not been received within the said period of forty-five days or such further time as a judge of the requested state may direct, the person claimed may be discharged from custody.

(6) The discharge of the person claimed under paragraph (5) shall not prevent extradition proceedings again being initiated if the request for extradition is received after such discharge.

Article XVIII. REQUESTS BY SEVERAL STATES

Where the requesting state and one or more other states request the extradition of the same person, the requested state shall, subject to its obligations under agreements with the other states, give priority to the request of the state that first requested extradition. Such priority shall, however, be given only in exceptional cases to a state when the person claimed is a national of that state and its laws do not allow the extradition of its nationals.

Article XIX. SURRENDER OF THE PERSON CLAIMED

(1) The requested state shall inform the requesting state as soon as possible of its decision with regard to the request for extradition. The requested state shall give the reason for any complete or partial rejection of the request.

(2) If extradition is granted the requested state shall cause the person claimed to be surrendered to the persons who are authorized by the requesting state to receive him at the time and place agreed between the Contracting Parties.

(3) If the person claimed has been made available in accordance with paragraph (2) but has not been conveyed out of the territory of the requested state within thirty days, he may be discharged from custody. In that case the requested state may thereafter refuse to extradite the person claimed for the same offence.

(4) The requested state shall inform the requesting state of the period of time during which the person claimed was in custody for the purpose of extradition and of the date of his apprehension.

Article XX. POSTPONED SURRENDER

The requested state may postpone the surrender of the person claimed in order to prosecute him for another offence or in order that he may serve a sentence and shall so inform the requesting state.

Article XXI. SURRENDER OF ARTICLES

(1) If extradition is granted, all articles including property of any kind and money found in the possession of the person claimed that may be required as evidence or that have been acquired as a result of the offence or obtained as consideration for such articles shall, to the extent permitted by the law of the requested state and subject to its rights and those of third parties, which shall be duly respected, be surrendered by the requested state. The surrender of such articles shall take place even without any special request and, if possible, at the same time that the person claimed is surrendered.

(2) The requested state may refuse the surrender of such articles unless it receives a satisfactory assurance from the requesting state that they will be returned as soon as possible.

(3) Where the requested state surrenders such articles without requiring their return it shall not assert any customs lien or other right in rem under the provisions of its customs or tax laws unless the levy is owed by the victim of the offence.

Article XXII. RULE OF SPECIALITY

(1) A person who has been extradited under this treaty shall not be prosecuted, punished or detained with a view to carrying out a sentence for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom except where

- (a) The state which surrendered him consents; or
- (b) Having had the opportunity lawfully to leave the state to which he was surrendered, he has not done so within thirty days of his final discharge from custody or, having left, he has returned to that state. A discharge under an order of parole or probation which does not restrict the freedom of movement of the person extradited shall be deemed equivalent to a final discharge.

(2) A request for consent shall be submitted through the diplomatic channel and shall be accompanied by a warrant of arrest, a description of the offence in respect of which consent is requested including the date and place of its commission and a record established by a judge or competent officer of any statement made by the person in respect of the request for consent. If under the law of the requesting state the issuance of a warrant of arrest for the offence in respect of which the request is made is impossible, the request for consent shall be accompanied instead by a statement by a judge or competent authority of the charge upon which the requesting state intends to try the person.

(3) The state to which a person has been extradited may, however, take any legal measures necessary under its law in order to interrupt any lapse of time or to record a statement under paragraph (2).

(4) Instead of the offence for which he was extradited, the person extradited may be prosecuted or sentenced for a different offence, provided that it is based on the same facts as were set out in the request for extradition and supporting documents and that it is an offence referred to in Article II.

Article XXIII. RESULT OF CRIMINAL PROCEEDINGS

The requesting state shall upon request inform the requested state of the result of the criminal proceedings against the person extradited and shall send a copy of the final and binding decision to that state.

Article XXIV. RE-EXTRADITION

(1) The Contracting Party to which a person has been extradited under this treaty shall not re-extradite him to a third state without the consent of the Contracting Party that extradited him. The request for consent to re-extradition shall be accompanied by originals or true copies of the extradition documents of the third state.

(2) Such consent is not required under the conditions set out in Article XXII (1) (b).

Article XXV. TRANSIT

Transit of a person who is being extradited from a third state through the territory of one Contracting Party to the other Contracting Party shall, subject to the law of the Contracting Party through the territory of which the person is to be transported, be granted on request provided that the offence concerned would be an extraditable offence under this treaty. The Contracting Party requesting transit shall provide any documents required by the other Contracting Party.

Article XXVI. TRANSLATION

Any documents submitted in accordance with this treaty shall be accompanied by a translation certified in accordance with the law of the requesting state. Any such translation shall be admissible as evidence in extradition proceedings in the requested state.

Article XXVII. EXPENSES

(1) Expenses incurred in the territory of the requested state shall be borne by that state. However, the requesting state shall bear the expenses incurred in respect of conveying the person claimed to the requesting state from the place where he is committed for extradition by the competent judicial authority in the requested state and any expenses incurred in respect of transit.

(2) The requested state shall provide for the legal representation of the requesting state in any extradition proceedings.

Article XXVIII. APPLICABLE LAW

Except where this treaty otherwise provides, proceedings with regard to provisional arrest, extradition and transit shall be governed solely by the law of the requested state.

Article XXIX. DEFINITIONS

For the purpose of this treaty

(a) "Sentence" means any order of a criminal court whereby deprivation of liberty or any detention involving deprivation of liberty in addition to or instead of a penalty is imposed on a person;

(b) "Offence" means any act or omission referred to in paragraphs (1) or (3) of Article II.

Article XXX. TERRITORIAL APPLICATION

(1) A reference in this treaty to the territory of a Contracting Party is a reference to all territory, waters and airspace under its jurisdiction.

(2) The territory of a Contracting Party shall be deemed to include

(a) Any vessel registered in its territory if such vessel is on the high seas at the time an offence is committed; and

(b) Any aircraft against or on board which an offence is committed if that Contracting Party has jurisdiction over such offence.

(3) An offence committed partly within the territory of a Contracting Party shall be deemed to have been committed entirely within its territory.

Article XXXI. BERLIN CLAUSE

This treaty shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of Canada within three months of the date of entry into force of this treaty.

Article XXXII

(1) This treaty shall be ratified; the instruments of ratification shall be exchanged in Bonn as soon as possible.

(2) This treaty shall enter into force one month after the exchange of the instruments of ratification.

(3) This treaty may be denounced in writing by either Contracting Party at any time and it shall terminate one year after the date of such denunciation.

ZU URKUND DESSEN haben die von ihren Regierungen hierzu gehörig befugten Unterzeichneten dieses Abkommen unterschrieben.

GESCHEHEN zu Ottawa am 11. Juli 1977 in zwei Urschriften in deutscher, englischer und französischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the Treaty.

DONE in two copies at Ottawa this 11th day of July 1977, in the English, French and German languages, each version being equally authentic.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le Traité.

FAIT en deux exemplaires à Ottawa ce 11^e jour de juillet 1977, en français, en anglais et en allemand, chaque version faisant également foi.

Für die Bundesrepublik Deutschland:
For the Federal Republic of Germany:
Pour la République fédérale d'Allemagne :

M. v. PODEWILS

Für Kanada:
For Canada:
Pour le Canada :

DON JAMIESON

SCHEDULE

1. Murder.
2. Manslaughter.
3. Wounding, maiming or assault causing bodily harm whether or not loss of life results.
4. Illegal abortion.
5. Kidnapping for any purpose; abduction, false imprisonment.
6. Rape, indecent assault; incest; bigamy.
7. Unlawful sexual acts with or upon children under the age specified by the law of the Contracting Parties.
8. Procuring.
9. Wilful non-support or abandonment of a child or other dependent person where, as a result of such non-support or abandonment, the life or health of that child or other dependent person is or is likely to be endangered.
10. Robbery; theft; housebreaking; burglary; embezzlement; extortion.
11. Wilful damage to property.
12. Offences against the laws relating to fraud and criminal breach of trust; fraudulent conversion; obtaining property, money or securities by fraud or false pretences.
13. Offences against the laws relating to forgery, including uttering what is forged.
14. Receiving or possessing any property, including money and securities, knowing the same to have been unlawfully obtained.
15. Offences relating to counterfeiting.
16. Offences against the laws relating to perjury, including subornation of perjury; making a false affidavit, statutory declaration or oral statement under oath or on affirmation; false statements, either written or oral, whether or not under oath, made to a judicial authority or to a government agency or office.
17. Arson.
18. Obstruction of judicial proceedings or proceedings before governmental bodies or interference with an investigation of a violation of a criminal statute by influencing, bribing, impeding, threatening or injuring by any means any officer of the court, juror, witness, or duly authorized criminal investigator.
19. Prison break; assisting or permitting the escape of a person from custody.
20. Offences against the laws relating to bribery.
21. Offences against the laws relating to civil disorders and riots.
22. Offences against the laws relating to gambling.
23. Any act or omission with intent or that is likely to
 - (a) Endanger the safety of an aircraft in flight or of any person on board such aircraft; or
 - (b) Destroy or render any aircraft incapable of flight.
24. Any unlawful seizure or exercise of control of an aircraft in flight by force or violence or by threat of force or violence or by any other form of intimidation.
25. Any unlawful act or omission intended or that is likely to endanger the safety of any person travelling or being upon a railway or in any vessel or other means of transportation.
26. Piracy; mutiny or any mutinous act committed on board a vessel against the authority of the captain or commander of such vessel.
27. Offences against the laws relating to bankruptcy.

28. Offences against the laws relating to dangerous drugs and substances including drugs listed in Schedules I, II and III of the Single Convention on Narcotic Drugs of March 30, 1961 and substances listed in Schedules I, II and III to the Convention on Psychotropic Substances of February 21, 1971, as any such Schedule may be amended at any time.
 29. Offences against the laws relating to firearms and other weapons, ammunition, explosives, incendiary devices or nuclear materials.
 30. Offences against the laws relating to the sale or purchase of securities or commodities.
 31. Any other offence for which extradition may be granted under the laws of the Contracting Parties.
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