

No. 22524

**HUNGARY
and
ITALY**

Convention on extradition and judicial assistance in criminal matters. Signed at Budapest on 26 May 1977

Authentic text: French.

Registered by Hungary on 19 December 1983.

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et
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Convention d'extradition et d'entraide judiciaire en matière pénale. Signée à Budapest le 26 mai 1977

Texte authentique : français.

Enregistrée par la Hongrie le 19 décembre 1983.

[TRANSLATION — TRADUCTION]

CONVENTION¹ ON EXTRADITION AND JUDICIAL ASSISTANCE IN
CRIMINAL MATTERS BETWEEN THE HUNGARIAN PEOPLE'S
REPUBLIC AND THE ITALIAN REPUBLIC

The Presidential Council of the Hungarian People's Republic and the President of the Italian Republic, desiring to regulate extradition and reciprocal legal assistance in criminal matters between the two States, have agreed to conclude a convention on the subject and have for this purpose appointed as their plenipotentiaries:

The Presidential Council of the Hungarian People's Republic: H.E. Mihály Korom, Minister of Justice,

The President of the Italian Republic : H.E. Francesco Paolo Bonifacio, Minister of Justice, who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

SECTION I. EXTRADITION

OBLIGATION TO EXTRADITE

Article 1. The Contracting Parties undertake to surrender to each other upon application, in accordance with the rules and conditions laid down in the following articles and the procedural requirements of their domestic law, persons who are the subject of proceedings or have been sentenced by the judicial authorities of the other State.

GROUND FOR EXTRADITION

Article 2. 1. The following shall be subject to extradition:

- (a) Persons against whom proceedings are being taken for offences punishable under the laws of the Contracting Parties by a maximum of at least two years' imprisonment or a more severe penalty;
- (b) Persons who, for offences punishable under the laws of both Contracting Parties, are sentenced in final judgement by the courts of the applicant State to at least six months' imprisonment.

2. In the case of an application for extradition relating to several offences, some of which do not meet the sentencing conditions laid down in the preceding paragraphs, the Contracting Party applied to may authorize extradition for all the offences.

SPECIFIC LIMITS ON EXTRADITION

Article 3. The Contracting Parties shall not extradite their own nationals or resident aliens. A person's nationality status shall be determined as of the date of the application for extradition.

¹ Came into force on 13 March 1981, i.e., 30 days after the exchange of the instruments of ratification, which took place at Rome on 11 February 1981, in accordance with article 42 (1).

EXCEPTIONS TO THE OBLIGATION TO EXTRADITE

Article 4. Extradition shall be refused:

- (a) If the offence was, according to the law of the Party applied to, committed entirely or in part in the territory of that Party;
- (b) If, under the laws of either Party, the proceedings or execution of the sentence for the offence concerned would be inadmissible by virtue of the statute of limitations or an intervening amnesty, or if there is any other reason to prevent criminal proceedings from being taken or the sentence from being carried out;
- (c) If, in either Party, the offence giving rise to the application is an offence solely under legislation on the press or under tax, customs or currency laws;
- (d) If, in either Party, the offence giving rise to the application consists solely in non-fulfilment of military obligations;
- (e) If final judgement has been rendered by or proceedings are in progress before the authorities of the Party applied to in respect of the same offence and the person whose extradition is applied for;
- (f) If the offences were committed outside the territory of the applicant Party by a person not a national of that Party and the legislation of the State applied to does not authorize proceedings to be taken in respect of such offences when committed outside its territory;
- (g) If, in either Party, proceedings in respect of the offence may be instituted only if a complaint is lodged by the injured party and the injured party does not lodge such a complaint within the prescribed period; where the law of the applicant Contracting Party does not stipulate a complaint by the injured party, the Contracting Party applied to shall reckon the period prescribed under its own law for lodging a complaint from the date when the injured party learnt that the accused was within the territory of the said Contracting Party.

POLITICAL OFFENCES

Article 5. Extradition shall not be granted in the following cases:

- (1) When the offence in respect of which it is applied for is regarded by the State applied to as a political offence or an action connected with such an offence;
- (2) When the person whose extradition is applied for has been granted asylum in the territory of the State applied to;
- (3) When extradition would be incompatible with other international obligations of the State applied to.

APPLICATION FOR EXTRADITION AND SUPPORTING DOCUMENTS

Article 6. 1. An application for extradition for the purpose of criminal prosecution shall be accompanied by a judicial warrant for arrest. The said warrant shall set out the facts of the offence and the text of the legal rules concerning the offence and the punishment therefor; in the case of offences relating to property, an indication shall be given of the cost of the damage caused by the offence or the extent of the damage which the offence might have caused.

2. An application for extradition for the purpose of execution of sentence shall be accompanied by the decision with supporting arguments and a certificate to the effect that the decision has the force of *res judicata*, and by the text of the legal rules concerning

the offence committed by the convicted person; the application shall also indicate what proportion of his sentence the convicted person has served.

3. If the decision accompanying the application for extradition was rendered in the absence of the individual whose extradition is applied for, the applicant Contracting Party shall not execute the decision but shall, if extradition is granted, conduct the proceedings again with the participation of the person extradited, subject to the conditions established under its own legislation.

4. In the case of an offence to be prosecuted in response to a complaint by the injured party, the date on which such complaint was lodged shall be indicated in the application for extradition together with the fact that the complaint by the injured party was lodged by a person entitled to do so. If the legislation of the applicant Contracting Party establishes a deadline for the lodging of a complaint by the injured party, the text of that law shall also be made available.

5. The application for extradition shall indicate the name of the person whose extradition is applied for and his nationality and, where possible, his particulars, information as to his whereabouts, his photograph and his fingerprints shall also be enclosed.

6. The application for extradition and all enclosed original records and documents pertaining thereto or authenticated copies thereof shall be accompanied by a translation into the language of this Convention, whose accuracy shall be certified by the authorities of the applicant Party.

DETENTION OF THE PERSON WHOSE EXTRADITION IS APPLIED FOR

Article 7. 1. Upon receipt of an application for extradition that satisfies the conditions laid down in the Convention, the Contracting Party applied to shall without delay take steps to locate the person whose extradition is applied for and shall detain him if necessary.

2. If insufficient information has been provided to enable the application for extradition to be given effect, the Contracting Party applied to shall ask for supplementary information, indicating what is missing. The Contracting Party applied to may for this purpose set the applicant Contracting Party a time-limit of a maximum of two months; in response to a well-founded request by the applicant Contracting Party, such a time-limit may be extended by a maximum of one month.

3. If the applicant Contracting Party does not supply the missing information within the time-limit established under paragraph 2, the person whose extradition is applied for shall be released. In such a case, a further application for extradition may always be submitted.

PROVISIONAL DETENTION

Article 8. 1. In urgent cases, a person whose extradition is applied for may be provisionally detained even before the arrival of the application for extradition specified in article 6, if the competent authority of either Contracting Party makes application direct to the Ministry of Justice of the other Contracting Party by post, telegraph or telex. Such application shall indicate the offence in respect of which extradition is to be applied for, the time and place of its commission, the date and registration number of the arrest warrant or decision underlying the extradition and, where possible, particulars of the individual sought and his whereabouts.

2. The applicant Contracting Party shall be notified without delay of the time when provisional detention was effected or of the reasons for which it was not possible to give effect to the application.

3. Provisional detention shall cease if, one month after detention is effected, the Party applied to has not been presented with an application for extradition.

EXECUTION OF AN APPLICATION FOR EXTRADITION

Article 9. 1. The place and time for the surrender of the individual shall be communicated to the applicant Contracting Party at the same time as the decision on the application for extradition.

2. Reasons shall be given for any total or partial rejection of or delay in complying with the application for extradition.

3. When the person sought has requested asylum in the territory of the State applied to, that State may defer consideration of the application for extradition until the competent authorities have made a final ruling on the request for asylum.

In any event, a decision shall be taken on the application for extradition within four months of receipt of the application for extradition.

SURRENDER

Article 10. The applicant Contracting Party shall take custody of the extradited person at the place specified no later than 15 days after the date set, failing which the Contracting Party applied to shall release the person whose extradition was applied for.

DEFERRED OR CONDITIONAL SURRENDER

Article 11. 1. If in the Contracting Party applied to criminal proceedings in respect of another offence are in progress against the person whose extradition has been applied for, or if that person has been convicted of another offence, the Contracting Party applied to shall take a decision on extradition but shall defer surrender of the individual until the conclusion of the proceedings or the execution or completion of the sentence.

2. A person whose extradition has been applied for may also be surrendered temporarily to the applicant Contracting Party in the circumstances referred to in paragraph 1 if in the event of deferred surrender prosecution would be barred by the statute of limitations or the investigation would be made very difficult. A person temporarily surrendered shall be returned promptly after the conclusion of the procedural action for which he was so surrendered, and not later than three months after the surrender. This limit may by common accord between the Parties be extended by a period not exceeding three months.

CONFLICTING APPLICATIONS FOR EXTRADITION

Article 12. If several States apply for extradition of the same person in respect of the same offence or of different offences, the Contracting Party applied to shall reach a decision having regard to all the circumstances and in particular the relative gravity and location of the offences, the respective dates of the applications, the nationality of the individual sought and the possibility of later extradition to another State.

LIMITS TO THE JEOPARDY OF THE PERSONS EXTRADITED

Article 13. 1. An individual surrendered shall not without the consent of the Party applied to be prosecuted, tried or detained with a view to execution of a sentence, nor subjected to any other restriction on his individual liberty, nor extradited to a third State,

for any act antedating his surrender other than that for which extradition was granted. A request to that effect must be submitted, together with the documents called for in article 6 and a judicial record containing any statements made by the extradited person. Such consent shall be given when the offence in respect of which it is requested is itself extraditable under the terms of this Convention.

2. The consent of the Contracting Party applied to shall not be required if

- (a) The extradited person does not leave the territory of the applicant Contracting Party within one month of the conclusion of the criminal proceedings or, if convicted, within one month of his final release; such periods shall not include any time during which the extradited person is unable through no fault of his own to leave the territory of the applicant Contracting Party;
- (b) The extradited person leaves the territory of the applicant Contracting Party and returns of his own free will.

EXCLUSION OF SENTENCE OF DEATH

Article 14. If the offence giving rise to the application for extradition is punishable by sentence of death only under the legislation of the applicant State, such a sentence shall not be imposed and, if already passed, shall not be carried out.

INFORMATION ON THE OUTCOME OF CRIMINAL PROCEEDINGS

Article 15. The applicant Contracting Party applied to shall inform the Contracting Party applied to of the outcome of the criminal proceedings taken against the person extradited. If final judgement is handed down against the person extradited, a copy thereof shall be transmitted. This obligation shall also apply in the circumstances defined in article 13.

DELIVERY OF ARTICLES

Article 16. 1. During extradition proceedings the Party applied to shall, in so far as its legislation permits, make available at the request of the applicant Party:

- (a) Articles which may be used in evidence against the person whose extradition is applied for;
- (b) Any articles found about the person whose extradition is applied for which came into his possession as a result of the offence in respect of which extradition is sought or acquired by him in exchange for such articles or in payment for committing the offence.

2. The articles referred to in paragraph 1 shall be delivered to the applicant Contracting Party at the surrender of the extradited person or, if this is not possible, thereafter. The Contracting Party applied to may temporarily retain such articles if they are absolutely necessary to the conduct of other criminal proceedings.

3. The rights of third persons in any articles delivered shall be unaffected. Such articles shall be returned at the conclusion of the criminal proceedings to the Contracting Party applied to so that it may restore them to the rightful claimant or owner living within its territory. If the rightful claimant or owner cannot be identified, the articles shall be surrendered to the Contracting Party applied to without requisit.

4. Articles shall be delivered even if extradition cannot take place owing to the escape or death of the individual sought or for any other reason.

CONVEYANCE IN TRANSIT

Article 17. 1. The Contracting Parties shall convey to their own territory persons extradited by a third State to the other Contracting Party at the request of that Party. Conveyance in transit shall not be mandatory if extradition is not mandatory under this Convention.

2. A request for conveyance in transit shall be submitted and accompanied by supporting material in the same manner as the application referred to in article 6.

3. The Contracting Parties shall agree in each instance on the manner, route and other conditions of conveyance in transit.

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

- (a) Where no landing is scheduled, the requesting Party shall notify the Party over whose territory the flight will pass and shall attest to the existence of one of the documents specified in article 6, paragraphs 1 and 2. In the event of an unscheduled landing, such notification shall have the same effect as the application for provisional detention provided for in article 8, and the requesting party shall submit a normal request for conveyance in transit;
- (b) Where a landing is scheduled, the requesting party shall submit a normal request for conveyance in transit in accordance with paragraph 1 above.

METHOD OF COMMUNICATION

Article 18. Applications for extradition or temporary surrender and requests for conveyance in transit shall be submitted through the diplomatic channel.

COSTS

Article 19. The costs of extradition shall be borne by the Contracting Party in whose territory they are incurred, while the costs of conveyance in transit shall be borne by the requesting Contracting Party.

RELATIONS WITH OTHER INTERNATIONAL AGREEMENTS

Article 20. The provisions of this section shall be without prejudice to international agreements governing extradition in particular cases to which the two Contracting States are parties.

TIME-LIMITS

Article 21. The provisions of this section shall be applicable to offences committed after the date of entry into force of this Convention.

SECTION II. JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

OBLIGATION TO LEND JUDICIAL ASSISTANCE

Article 22. The judicial authorities of the Contracting Parties shall lend each other reciprocal assistance in criminal matters.

SCOPE OF JUDICIAL ASSISTANCE

Article 23. Judicial assistance shall extend to the conduct of legal proceedings and, in particular, to the service of documents, the hearing of witnesses and experts and the transmittal of material evidence and documents.

SUBMISSION OF REQUESTS FOR JUDICIAL ASSISTANCE

Article 24. The judicial authorities of the Contracting Parties shall submit their requests for judicial assistance, except as otherwise provided by this Convention, through the Ministry of Justice or the office of the Procurator-General of the Hungarian People's Republic, on the one hand, and through the Ministry of Justice of the Italian Republic, on the other.

REQUESTS FOR JUDICIAL ASSISTANCE

Article 25. 1. Letters rogatory must contain:

- (a) An indication of the subject to which the letters rogatory refer,
- (b) The names, occupations and addresses of those concerned,
- (c) All necessary facts relating to the subject of the letters rogatory; in the case of requests for the service of documents, the address of the intended recipient and the nature of the document to be served; for letters rogatory relating to judicial assistance, the circumstances on which evidence must be furnished and, when appropriate, the questions to be asked of the persons interrogated.

2. Letters rogatory for the service of a document or other judicial assistance shall be drafted in the language of this Convention or accompanied by a translation into that language whose accuracy has been certified by the authorities of the requesting Party.

EXECUTION OF REQUESTS FOR JUDICIAL ASSISTANCE

Article 26. 1. The requested court shall execute the requests for judicial assistance in accordance with the legislation of its State and may if necessary apply during execution the same measures of coercion as are provided for under that legislation.

2. The requested court may also, at the request of the requesting authority, follow a special procedure specified by that authority, provided that it does not conflict with the general principles of the legislation of the State of the requested court.

3. The requested court shall, at the request of the requesting court, notify that court directly and in good time where and when judicial assistance is to be rendered.

SERVICE OF DOCUMENTS

Article 27. 1. If the document to be served is in the language of the requested court or a translation into that language is appended, the requested court shall serve it in accordance with its own legal rules.

2. Except in the cases indicated in paragraph 1 above, a document may not be served on its intended recipient unless he accepts it of his own free will.

3. The translation referred to in paragraph 1 above must be a translation produced by an authorized body or a sworn translator of one of the Contracting Parties.

4. The requested court may also, at the request of the requesting authority, serve the document under a special process specified by that authority provided that it does not conflict with the general principles of the legislation of the State of the requested court.

DEFECTIVE ADDRESSES OR LACK OF COMPETENCE

Article 28. 1. When the address of a person to be interrogated or on whom a document must be served is imprecise or incorrect, the requested court shall, if possible, determine the correct address.

2. If the requested court is not competent to execute the letters rogatory, it shall forward them to the competent court if that court is within the country. The requested court shall directly so inform the requesting court.

PROOF OF SERVICE

Article 29. Proof of service shall be provided a dated receipt bearing the signatures of the person who served the document and of the recipient and the seal of the court authorized to serve the document, or by a certificate from the aforementioned court indicating the place, manner and date of service.

REQUESTS WHICH CANNOT BE EXECUTED

Article 30. If letters rogatory requesting service of a document or judicial assistance cannot be complied with, the documents must be returned with an explanation of the reasons for which it was not possible to comply with the letters rogatory, or on the basis of which execution was denied.

DENIAL OF JUDICIAL ASSISTANCE

Article 31. Judicial assistance may be denied:

- (a) If the request relates to offences regarded by the requested Party as political offences or offences connected with political offences, or as tax, military, currency or customs offences or offences under legislation relating to the press, or offences which in any event are not offences under ordinary law;
- (b) If the requested Party believes that execution of the request might impair the sovereignty, security and public order or other essential interests of the country.

PROTECTION OF WITNESSES AND EXPERTS

Article 32. 1. No witness or expert who, irrespective of his nationality, appears voluntarily before a court of the requesting Contracting Party in response to a summons served on him by the court of the requested Party, may be prosecuted or detained for the offence to which the criminal proceedings relate or for any other offence committed before crossing the frontier of the requesting Contracting Party, nor may sentence pronounced in the territory of the requesting Contracting Party be carried out against such a witness or expert.

2. The protection established by paragraph 1 above shall cease if the expert or witness, although able to do so, does not leave the territory of the Contracting Party applied to within 15 days of the date on which the court informs him that his presence is no longer necessary.

3. The costs occasioned by the personal appearance of the witness or expert shall be borne by the requesting Contracting Party. The letters rogatory requesting the service of a summons shall indicate the sum payable to the witness or expert for his expenses incurred during his travel and stay abroad; they shall also indicate the sum provided as an advance payment.

4. Witnesses may request reimbursement for lost earnings, and experts may also claim an expert's fee.

APPEARANCE BY PERSONS IN CUSTODY

Article 33. 1. If it becomes urgently necessary for a court of either Contracting Party to hear, as a witness or expert, a person held in custody or serving a term of imprisonment

in the territory of the other Contracting Party, the latter Contracting Party may, in response to a request through the diplomatic channel, temporarily transfer custody of that person for the purpose of the hearing provided that the person gives his consent.

2. The person transferred shall remain in custody and shall be returned immediately after the hearing. In these circumstances he shall also be entitled to the protection referred to in article 32, paragraph 1.

3. Under the conditions laid down in paragraphs 1 and 2 above and in article 32, paragraph 1, the conveyance in transit of a person held in custody or serving a term of imprisonment in a third country may also be authorized.

TRANSMITTAL OF EXTRACTS FROM THE POLICE RECORDS

Article 34. 1. The Contracting Parties shall, insofar as their respective judicial authorities could themselves obtain them in similar circumstances, transmit to each other through the diplomatic channel on request extracts from the police records relating to nationals of the other Party or to persons residing in the territory of that Party, for the purposes of a criminal case.

2. The requested Contracting Party may decline to comply with a request if it relates to its own nationals.

EXPENSES

Article 35. 1. Expenses occasioned by the provision of judicial assistance in criminal matters shall be borne by the Contracting Party in whose territory they are incurred.

2. Expenses occasioned by the provisional transfer of a person held in custody in the territory of the requested Contracting Party shall be borne by the requesting Contracting Party.

ASSUMPTION OF CRIMINAL PROCEEDINGS

Article 36. Where a national of either Contracting State has in the territory of the other Contracting State committed an offence punishable by law in both Contracting States, the State where the offence was committed may, through the channels established in article 24, request the other Contracting State to assume charge of the relevant criminal proceedings.

OBLIGATION TO ASSUME CHARGE OF PROCEEDINGS

Article 37. 1. The requested Party shall undertake to ensure the prosecution by its own judicial authorities of persons committing the offences referred to in the previous article insofar as it is competent to try such persons.

2. In trials for traffic offences, the substance of the offence shall be understood in the light of the traffic rules in force where the offence was committed; in this case, the request must be submitted by the requesting Party within 60 days of either the date on which the offence was committed or the discovery of the perpetrator.

REQUEST TO ASSUME CHARGE OF PROCEEDINGS

Article 38. A request to assume charge of criminal proceedings must contain a résumé of the facts, accompanied by:

- (a) The original file or a certified copy or photocopy thereof, and any articles which may be used in evidence;
- (b) For information purposes, the provisions of the current legislation in the requesting State applicable to the offence committed;
- (c) Additionally, in the case of traffic offences, the traffic rules necessary to understand the offence.

INFORMATION ON THE OUTCOME OF CRIMINAL PROCEEDINGS

Article 39. 1. The requested State shall notify the requesting State, through the channels specified in article 24 of the arrangements made pursuant to a request and the outcome of the criminal proceedings and, where appropriate, it shall also transmit the final judgement or a certified copy or photocopy thereof.

2. Any rights of the requested State or of a third person in articles delivered shall be unaffected. Documents and articles delivered shall be returned as promptly as possible.

SUSPENSION OF STATUTORY LIMITATION ON LIABILITY TO PROSECUTION

Article 40. A request to assume charge of criminal proceedings shall cause the suspension of the statutory limitation on liability to prosecution in the requested State. The limitation shall be suspended from the time when the request to assume charge of criminal proceedings was sent to the requested State.

SECTION III. FINAL PROVISIONS

Article 41. This Convention shall be ratified, and the instruments of ratification shall be exchanged in Rome as soon as possible.

Article 42. 1. This Convention shall enter into force thirty days after the exchange of instruments of ratification and shall cease to have effect one year following the date on which either Contracting Party denounces it.

2. Upon the entry into force of this Convention, the Convention on the Reciprocal Extradition of Offenders under General Law, done at Turin on 27 February 1869, and the Convention on Conveyance in Transit of Offenders under General Law Extradited by Other States, done at Vienna on 6 December 1882, shall cease to have effect.

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

DONE at Budapest on 26 May 1977 in two copies, both in the French language.

For the Hungarian People's Republic:

[MIHÁLY KOROM]

For the Italian Republic:

[FRANCESCO PAOLO BONIFACIO]