

No. 21588

**POLAND
and
AUSTRIA**

**Treaty concerning extradition. Signed at Vienna on 27
February 1978**

Authentic texts: Polish and German.

Registered by Poland on 28 January 1983.

**POLOGNE
et
AUTRICHE**

Traité d'extradition. Signé à Vienne le 27 février 1978

Textes authentiques : polonais et allemand.

Enregistré par la Pologne le 28 janvier 1983.

[TRANSLATION — TRADUCTION]

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

The Council of State of the Polish People's Republic and the Federal President of the Republic of Austria,

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 Council of State of the Polish People's Republic:

Dr. Jerzy Bafia, Minister of Justice;

The Federal President of the Republic of Austria:

Dr. Christian Broda, Federal Minister of Justice;

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

SECTION I. CONDITIONS FOR EXTRADITION

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 for the carrying out of a final sentence or preventive measures imposed on the basis of proceedings conducted in the absence of the person sought shall be granted only if it is shown that he had been informed of the proceedings against him and was in a position to safeguard his rights of defence in those proceedings.

Article 2. 1. Extradition shall be granted in respect of offences punishable under the laws of both Contracting States by deprivation of liberty 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 connection with one or more of the offences referred to in paragraph 1, extradition for the purpose of carrying them out shall be granted, provided that the term of the sentences or measures still to be carried out is not less than six 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, in which case the provisos specified in those paragraphs concerning the term of the sentences or measures shall not apply.

Article 3. Nationals of the requested State shall not be extradited.

¹ Came into force on 1 May 1980, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Warsaw on 26 February 1980, in accordance with article 31 (2).

Article 4. Extradition shall not be granted:

- (1) If the person sought has been granted asylum in the territory of the requested State;
- (2) If extradition would not be compatible with other obligations of the requested State under multilateral conventions.

Article 5. Extradition shall not be granted if it is sought in respect of an offence which, in the view of the requested State, is according to its own law:

- (1) A political offence or an offence under military law;
- (2) Solely a violation of tax, monopoly, customs or exchange regulations or of regulations concerning the control of goods or concerning external trade (fiscal offences);
- (3) Subject to private prosecution.

Article 6. 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, including ships and aircraft, or is subject for other reasons to the jurisdiction of the requested State and the vital interests of that State have been prejudiced.

2. However, extradition may be granted if it is being granted in connection 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 or other reasons essential to the proceedings, for reasons of carrying out the sentence or in the interest of the rehabilitation of the extradited person.

Article 7. Extradition shall not be granted:

- (1) If, in the requested State and in respect of the offence for which extradition is requested, the person sought has been found guilty or acquitted or the charge against him has been dismissed, unless the authority taking the decision lacked the requisite jurisdiction;
- (2) If the person sought has been acquitted or found guilty in a third State of the offence for which extradition is requested and the full sentence imposed has already been served or the preventive measures have been fully carried out, or the entire sentence or measures of the part not yet served or carried out has been permitted or the carrying out thereof is barred by lapse of time under the law of that State;
- (3) If prosecution or the carrying out of the sentence or preventive measures is barred by lapse of time under the law of the requesting or requested State.

Article 8. 1. The absence of any application or authorization for the institution of criminal proceedings that may be required under the law of the requested State shall not prevent extradition.

2. The proclamation of an amnesty in the requested State shall preclude extradition only if the offence covered by the amnesty in respect of which extradition is sought is subject to the jurisdiction of the requested State for one of the reasons referred to in article 6, paragraph 1.

Article 9. Extradition shall not be granted for the carrying out of a sentence or preventive measures imposed by a court that has been established only provisionally or in exceptional circumstances. In the case of extradition for prosecution, the extradited person shall not be tried in the requesting State by such a court.

SECTION II. LIMITATIONS ON PROSECUTION AND CARRYING OUT
OF SENTENCES AFTER EXTRADITION

Article 10. If the offence is punishable by death under the law of the requesting State but not under the law of the requested State, only a sentence of deprivation of liberty shall be imposed or carried out, in lieu of the death penalty, in the requesting State.

Article 11. 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 accompanied by the documents referred to in article 14 and a legal record indicating the views of the extradited person concerning the proposed expansion of the proceedings or of the carrying out of a sentence or preventive measures. Hearings shall be held before a judge or a State counsel 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 period 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 period referred to in paragraph 2, subparagraph 2, shall not begin to run until he has been finally discharged also in respect of the proceedings instituted in connection with that offence.

Article 12. 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, without prejudice to the provisions of article 11, be proceeded against or sentenced only in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition. In case of doubt, the requesting State shall seek the views of the requested State.

Article 13. 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 authenticated copies thereof and a legal record indicating the views of the extradited person concerning the proposed

re-extradition. Hearings shall be held before a judge or a State counsel 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 11, paragraph 2, subparagraph 2, is fulfilled.

SECTION III. EXTRADITION PROCEDURE

Article 14. 1. The request for extradition shall be accompanied by the original or an authenticated copy of a warrant of arrest or of a final conviction and sentence or order for the imposition of preventive measures. Such documents must be signed by the competent judge or State counsel and bear the official seal of the requesting authority.

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 place and time of its commission;
- (2) A legal description of the offence and a copy of the legal provisions that are applicable or have been applied;
- (3) In the case of a request for extradition for the carrying out of a sentence or preventive measures, documents evidencing the enforceability of the sentence or order;
- (4) As accurate a description as possible of the person sought, his nationality and his place of residence or whereabouts.

Article 15. If the requested State considers that the information and supporting documents communicated to it are insufficient, it shall request the necessary supplementary information. The requested State may fix a reasonable time-limit for the receipt of such supplementary information. The time-limit may be extended upon submission of a well-founded request. In the absence of such supplementary information, the decision on the request for extradition shall be taken on the basis of the available information and supporting documents.

Article 16. 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 take the necessary measures to trace him. If necessary, the requested State shall detain the person sought or take other measures to prevent his escape.

Article 17. 1. In urgent cases 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 escape of the person sought.

2. The request for provisional arrest shall state that one of the documents referred to in article 14, paragraph 1, exists and that it is intended to submit a request for extradition. It shall also include a brief statement of the offence with an indication of the time and place of its commission, details of the penalty involved or the sentence or preventive measures to be carried out, and as accurate a description as possible of the person sought, his nationality and his place of residence or whereabouts. The requesting State shall be informed without delay of the result of its request.

3. Provisional arrest may be terminated if the request for extradition and the documents referred to in article 14, paragraph 1, are not received within a period of 20 days after arrest. Provisional arrest shall not in any event exceed 40 days from the date of arrest. It may, however, be terminated at any time if the requested State takes such measures as it considers necessary to prevent the escape of the person sought.

4. The termination of provisional arrest shall not prejudice rearrest and extradition if a request for extradition is received subsequently.

Article 18. 1. If the competent authorities of a Contracting State learn that a person whose extradition may be requested by the other Contracting State is in the territory of the first-mentioned State, they may place him under provisional arrest. The other Contracting State shall be informed without delay, with an indication of the date of arrest and the place of detention.

2. The Contracting State receiving the information referred to in paragraph 1 shall signify without delay whether it intends to submit a request for extradition. Provisional arrest shall be terminated if such signification is not received within 15 days from the date of arrest or if it is signified that extradition will not be requested. The request for extradition must be sent within the period of 20 days specified in article 17, paragraph 3. The termination of provisional arrest shall not prejudice rearrest and extradition if a request for extradition is received subsequently.

Article 19. 1. The requested State shall take a decision with regard to extradition as soon as possible and shall inform the requesting State of its decision. Reasons shall be given for any complete or partial rejection.

2. If extradition is agreed to, the requested State shall also signify when it will be prepared to surrender the person sought. The Contracting States shall agree on the time and place of surrender to the authorities of the requesting State or, where necessary, to the authorities of a State of transit.

3. Escort personnel assigned by a Contracting State to convey a person sought to or from the territory of the other Contracting State by air shall be entitled, in the territory of the other Contracting State, to take the necessary precautions to prevent his escape up to the time of his surrender or after his taking over, as the case may be.

4. Subject to the provisions of paragraph 5, the person sought may be released if he is not taken over within 15 days from the date on which the requested State was prepared to surrender him. He shall in any case be released after the expiry of 30 days from that date, and the request for extradition shall be considered void. The requested State may thereafter refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Contracting State from surrendering or taking over the person sought, it shall notify the other Contracting State. The two Contracting States shall agree as soon as possible on a new date for surrender. The provisions of paragraph 4 shall thereafter apply to that date.

Article 20. 1. If requests for the extradition of a person are received from a Contracting State and from a third State, the requested State shall decide which State has precedence. In so doing, it shall have regard to all the circumstances and especially the seriousness and place of commission of the offences, the dates on which the requests were received, the nationality of the person sought, the possibility of re-extradition and its treaty obligations *vis-à-vis* the third State.

2. If a Contracting State and a third State submit requests for extradition to the other Contracting State and 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 any re-extradition from the third State to the other Contracting State.

Article 21. 1. The requested State may, after agreeing to extradition, postpone the surrender of the person sought in order that he may be proceeded against by that State for another offence or in order that a sentence of deprivation of liberty or preventive measures imposed on him by its courts for another offence may be carried out.

2. If surrender is postponed, the requested State may, at the request of the requesting State, temporarily surrender the person sought in order that urgent legal proceedings, particularly the trial, may be conducted. Details of the proceedings shall be included in the request. The person surrendered shall be returned without delay to the requested State after the completion of the proceedings or at its request.

3. The requesting State shall keep the person temporarily surrendered in custody until he is returned. The time spent in custody shall be deducted from the sentence imposed or to be imposed in the requested State.

Article 22. 1. Where the extradition of a person is agreed to, the requested State shall also hand over, without special request, property:

- (1) Which may be required as evidence, or
- (2) Which the person sought acquired as a result of the offence or in compensation for such property.

2. The property shall, if possible, be handed over at the same time as the person sought. It shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.

3. Property which is subject to seizure, confiscation or forfeiture 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. Any rights which the requested State or third Parties may have in the property shall in every case be preserved. Where these rights exist, the property shall be returned without charge to the requested State as soon as possible after the completion of the proceedings in the requesting State. If such rights would be impaired by the handing over of the property, it shall not be agreed to.

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 condition that it is delivered to the injured party or his authorized representative upon production of a certificate issued by its competent courts or State counsels' departments.

6. Where property is handed over in accordance with this article, regulations restricting the import and export of property and currency shall not apply.

Article 23. Subject to the provisions of this Treaty, the procedure with regard to extradition and provisional arrest in the territory of the requested State shall be governed by the law of that State.

Article 24. The requesting State shall inform the requested State of the result of the proceedings. If a final decision is rendered in the case, the original or an authenticated copy thereof shall be communicated.

SECTION IV. TRANSIT

Article 25. 1. Transit of a person to be extradited by a third State to a Contracting State through the territory of the other Contracting State shall be granted on the same conditions as extradition. Except as otherwise provided below, the provisions of this Treaty concerning extradition shall also apply to transit.

2. Transit may be refused by the requested State if the request relates to a person against whom criminal proceedings are pending or who has been finally convicted and sentenced in that State or if transit might prejudice vital interests of that State.

3. The requested State shall hold the person to be conveyed in transit in custody throughout the period of transit. It shall not proceed against him or carry out any sentence or preventive measures in respect of offences committed prior to transit except with the consent of the extraditing State.

4. In case of transit by air without intermediate stops, the express consent of the Contracting State which is overflown shall not be required. That State shall be notified in advance by the requesting State that one of the documents specified in article 14, paragraph 1, exists, that there is no bar to transit within the meaning of this Treaty and, in particular, that the person to be conveyed in transit is not a national of the State overflown. In case of an emergency landing in the territory of the State overflown, such notification shall have the same effects as the request for provisional arrest referred to in article 17.

SECTION V. GENERAL PROVISIONS

Article 26. Requests under this Treaty shall be submitted in writing. Correspondence shall be conducted between the Minister of Justice or the Office of the State Counsel-General of the Polish People's Republic and the Federal Minister of Justice of the Republic of Austria. The foregoing shall not preclude the use of the diplomatic channel.

Article 27. Supporting documents shall be in the language of the requesting State. Translations into the language of the requested State shall not be required.

Article 28. The Contracting States shall waive reimbursement of costs arising in their territory by reason of extradition, temporary surrender (article 21, paragraph 2) or handing over of property (article 22). However, the requesting State shall bear air transport costs arising by reason of surrender effected by air at its request or costs arising by reason of transit.

Article 29. 1. For the purposes of this Treaty, the expression "preventive measures" means any order, made in criminal proceedings in respect of a punishable offence which is extraditable under this Treaty, for committal to a psychiatric institution, to an institution for the cure of addiction or to an institution for recidivists having served a prison sentence.

2. If the term of confinement in the institution is not specified, it shall, for the purpose of determining whether it is less than six months (article 2, paragraph 2), be

deemed to run until the latest date on which it must be ended under the law of the requesting State.

Article 30. This Treaty shall not affect the obligations of the requested State with respect to extradition arising out of multilateral conventions.

SECTION VI. FINAL PROVISIONS

Article 31. 1. This Treaty shall be ratified. The instruments of ratification shall be exchanged at Warsaw.

2. The Treaty shall enter into force on the first day of the third month following the month during which the instruments of ratification are exchanged.

3. The Treaty is concluded for a term of five years and shall thereafter remain in force unless one of the Contracting States gives notice of termination in writing to the other Contracting State through the diplomatic channel six months before the expiry of the five-year term.

4. If the Treaty has not been terminated in accordance with paragraph 3, 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 such case, it shall remain in force for one year after notice of termination.

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

DONE at Vienna, on 27 February 1978, in duplicate in the Polish and German languages, both texts being equally authentic.

For the Council of State
of the Polish People's Republic:
[JERZY BAFIA]

For the Federal President
of the Republic of Austria:
[CHRISTIAN BRODA]