

**No. 24596**

---

**AUSTRIA  
and  
HUNGARY**

**Treaty on reciprocal enforcement of sentences in criminal  
cases. Signed at Vienna on 6 May 1985**

*Authentic texts: German and Hungarian.*

*Registered by Austria on 8 January 1987.*

---

**AUTRICHE  
et  
HONGRIE**

**Traité relatif à l'exécution réciproque des sentences pénales.  
Signé à Vienne le 6 mai 1985**

*Textes authentiques : allemand et hongrois.*

*Enregistré par l'Autriche le 8 janvier 1987.*

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE  
HUNGARIAN PEOPLE'S REPUBLIC ON RECIPROCAL EN-  
FORCEMENT OF SENTENCES IN CRIMINAL CASES

The Federal President of the Republic of Austria and the Presidential Council of the Hungarian People's Republic,

Desiring to enhance legal relations between the two States and to facilitate legal dealings between them, as well as to promote the social rehabilitation of convicted persons, have agreed to conclude a Treaty on the reciprocal enforcement of sentences in criminal cases and have for that purpose appointed as their Plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Harald Ofner, Federal Minister of Justice;

The Presidential Council of the Hungarian People's Republic: Dr. Imre Markoja, Minister of Justice;

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

## PART I. GENERAL PROVISIONS

## GENERAL PRINCIPLES

*Article 1.* 1. The Contracting States undertake, on request and in accordance with the following provisions and conditions, reciprocally to enforce sentences in criminal cases where the court of one of the Contracting States has finally and absolutely imposed a term of imprisonment or preventive measures (article 29) on a national of the other Contracting State.

2. Requests under paragraph 1 shall be made by the State in which the sentence has been passed (sentencing State). This shall not, however, restrict the right of the State in which the sentence is to be enforced (enforcing State) to submit a request under paragraph 1 to the sentencing State.

## RIGHT OF THE CONVICTED PERSON

*Article 2.* A convicted person, his statutory representative, his spouse, his immediate relatives or his siblings may file with either Contracting State a petition for proceedings under article 1. Every convicted person to whom this Treaty applies shall be informed by the sentencing State of the gist of the Treaty.

## DOMICILE, HABITUAL RESIDENCE

*Article 3.* Sentences shall be enforced only if the convicted person has his domicile or habitual residence in the enforcing State.

<sup>1</sup> Came into force on 1 December 1986, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Budapest on 9 September 1986, in accordance with article 33 (1).

## MUTUAL JUDICIAL LIABILITY

*Article 4.* Sentences shall be enforced only if the offence upon which the sentence is based is also punishable under the law of the enforcing State.

## POLITICAL OFFENCES

*Article 5.* 1. A sentence shall not be enforced if, in the opinion of the enforcing State, the offence upon which the sentence is based constitutes a political offence.

2. An offence in which, after consideration of all the circumstances of the individual case, especially the way in which the offence was committed, the means used or threatened and the seriousness of the actual or intended consequences, the criminal character of the offence outweighs its political character, shall not be deemed to be a political offence.

## MILITARY OFFENCES

*Article 6.* A sentence shall not be enforced if, in the opinion of the enforcing State, the offence for which the sentence was pronounced constitutes exclusively a failure to fulfill military duties.

## FISCAL OFFENCES

*Article 7.* 1. In criminal matters relating to levies, taxes, customs duties, monopolies and foreign currency, the sentence shall also be enforced if the offence upon which the sentence is based would be punishable in court under a similar statutory penal provision of the enforcing State.

2. Enforcement shall not be refused on the ground that the law of the enforcing State does not stipulate the same type of levies, taxes or monopolies or does not have levies, tax, custom duty, monopoly or foreign currency provisions of the same kind as is stipulated in the law of the sentencing State.

3. If a criminal offence not referred to in paragraph 1 is, in the opinion of the enforcing State, of an exclusively fiscal nature, enforcement may be refused.

## STATUTE OF LIMITATION

*Article 8.* A sentence shall not be enforced if the enforceability of the sentence of imprisonment or preventive action is statute-barred under the law of one of the Contracting States.

## EXTRAORDINARY COURTS

*Article 9.* A sentence shall not be enforced if the judgement has been pronounced by an extraordinary court.

## JUDGEMENTS "IN ABSENTIA"

*Article 10.* A sentence shall not be enforced if the judgement has been pronounced *in absentia*.

## "NE BIS IN IDEM"

*Article 11.* A sentence shall not be enforced if the convicted person has already been finally convicted or finally acquitted for the same offence in the enforcing State.

### PUBLIC POLICY

*Article 12.* A sentence shall not be enforced if, in the opinion of the enforcing State, its public policy or the principles of its legal system are endangered.

### LACK OF INTEREST IN ENFORCEMENT

*Article 13.* A sentence shall not be enforced if the convicted person is in custody in the sentencing State and a sentence of imprisonment or preventive action not exceeding four months is to be enforced at the time of the request. For the purpose of reaching a determination multiple terms of imprisonment or preventive action or the time still to be served shall be aggregated. If the length of the preventive action to be enforced is indefinite, the criterion used shall be the latest time at which, under the law of the sentencing State, the preventive action is to be terminated.

### CONSENT OF THE CONVICTED PERSON

*Article 14.* 1. Sentences shall not be enforced in the enforcing State without the consent of the convicted person.

2. If a convicted person is not capable of giving legal consent, it shall be obtained from his statutory representative.

## PART II. ACCEPTANCE AND EFFECTS OF ENFORCEMENT

### REQUESTS FOR ENFORCEMENT

*Article 15.* If, in the opinion of the sentencing State, the conditions are met for accepting enforcement under this Treaty, the sentencing State may, in accordance with its domestic law, request the enforcing State to accept enforcement of the prison sentence or preventive action imposed.

### AUTHORIZATION

*Article 16.* With regard to the terms of a request made under article 15, to which the documents referred to in article 24 must be attached, the enforcing State shall notify the sentencing State of the extent to which the request has been authorized. The reasons for total or partial refusals must be given.

### IMPLEMENTATION OF ENFORCEMENT

*Article 17.* 1. If a request under article 15 is accepted, the court of the enforcing State shall stipulate the same type and length of imprisonment or preventive action as has been imposed in the sentencing State. If, however, the type or length of such imprisonment is not consistent with the legislation of the enforcing State, the said State shall bring the sentence into line with the imprisonment or preventive action provided for under its law for a similar criminal offence. So far as possible, the type and length of imprisonment shall be consistent with the imprisonment or preventive action imposed in the sentence to be enforced. In every case, the enforcing State shall be bound by the established facts that constitute the basis for the sentence in the sentencing State.

2. The overall effect of enforcement in the enforcing State shall not be more unfavourable for the convicted person than would be further enforcement in the sentencing State.

3. Enforcement, including suspension of the remainder of the sentence on probation, shall be carried out in accordance with the law of the enforcing State. However, if the legal provisions of the sentencing State are more favourable for the convicted person with regard to the said suspension, they shall be applied in so far as they do not conflict with the law of the enforcing State.

4. Time spent in custody in the sentencing State shall be deducted in full from the sentence of imprisonment or preventive action served in the enforcing State.

#### DIVISION OF THE SENTENCE

*Article 18.* Where a sentence is based on more than one offence but can be enforced only in respect of that part of the prison sentence or preventive action which applies to certain of those offences, the court of the enforcing State shall determine, pursuant to the procedure under article 17, the part to be enforced in respect of the said offences.

#### EFFECTS OF ENFORCEMENT

*Article 19.* 1. Where, under the law of either Contracting State the validity of a foreign judgement calls for an intergovernmental agreement, the same legal effects shall attach to the sentence of the sentencing State in the enforcing State, upon its acceptance of enforcement, as attach to the sentences of the enforcing State in criminal cases.

2. Where consent has been given to a request for enforcement, the sentencing State shall transfer the convicted person as soon as possible to the enforcing State. Where the convicted person has already been transferred to the enforcing State or is already there, no further enforcement measures shall be taken in the sentencing State.

3. If the convicted person evades enforcement in the enforcing State, the sentencing State shall recover the right to enforce the remainder of the sentence.

4. The right of the sentencing State to enforce shall expire when the convicted person has served his sentence of imprisonment or preventive action or the sentence has been cancelled.

5. Where criminal proceedings are pending in the enforcing State against a convicted person for an offence that is the basis of the request for the acceptance of enforcement and the request has been granted, that State shall temporarily suspend the criminal proceedings. It shall recover the right to prosecute if the convicted person evades enforcement. The enforcing State shall drop the case when the sentence of imprisonment or preventive action has been served or enforcement has been cancelled.

#### CLEMENCY, AMNESTIES, RETRIALS

*Article 20.* 1. Clemency in favour of a convicted person may be granted by the enforcing State. The right of the sentencing State to recommend clemency to the enforcing State shall not be thereby precluded. Such recommendation shall be given favourable consideration when the enforcing State is determining whether to grant clemency. The right of the sentencing State to grant clemency having effect for its area of jurisdiction shall remain unaffected.

2. Convicted persons shall benefit from amnesties declared by the sentencing State and the enforcing State.

3. Only the sentencing State shall be competent to rule on a motion for retrial.

## COMMUNICATIONS

*Article 21.* 1. The Contracting Parties shall inform each other as soon as possible of all circumstances that may have a bearing on enforcement.

2. The sentencing State shall inform the enforcing State of, in particular, clemency, amnesties or retrials.

3. The enforcing State shall inform the sentencing State of the conclusion of enforcement.

## TRANSPORT OF CONVICTED PERSONS, TRANSIT THROUGH A THIRD STATE

*Article 22.* 1. Articles 21 and 22 of the Treaty between the Republic of Austria and the Hungarian People's Republic concerning extradition of 25 February 1975<sup>1</sup> shall apply *mutatis mutandis* to the transport of a convicted person to the enforcing State.

2. Article 29 of the Treaty between the Republic of Austria and the Hungarian People's Republic concerning extradition of 25 February 1975 shall apply *mutatis mutandis* where a convicted person is transported from one of the Contracting States through the territory of the other Contracting State into a third State or from a third State through the territory of one of the Contracting States into the other Contracting State to serve a sentence of imprisonment or preventive action imposed upon him.

## SPECIAL PROVISIONS

*Article 23.* 1. Where a convicted person is transported to the enforcing State under this Treaty he shall not be prosecuted, sentenced or otherwise subjected to any encroachment on his personal freedom in that State or extradited to a third State for committing, before he was handed over, an offence to which the handing-over authorization does not apply, or for any other reason that may have arisen before he was handed over.

2. The restriction under paragraph 1 shall not apply

1. Where the sentencing State consents to criminal prosecution, extradition or enforcement of a sentence of imprisonment or preventive action;

2. Where the transported convicted person remains in the enforcing state more than 45 days after his final release, although he could have and should have left it, or where, after leaving that State, he has voluntarily returned to it.

3. The provisions of the Treaty between the Republic of Austria and the Hungarian People's Republic concerning extradition of 25 February 1975 shall apply *mutatis mutandis* to the consent under paragraph 2, subparagraph 1.

## PART III. PROCEDURE

## REQUESTS AND DOCUMENTS

*Article 24.* 1. Requests under this Treaty shall be made in writing.

2. The following shall be attached to the request:

1. A transcript or true copy of the sentence with confirmation of its finality and enforceability;

<sup>1</sup> United Nations, *Treaty Series*, vol. 1028, p. 217.

2. A duplicate of the statutory provisions applied and of those regarding suspension of the remainder of the sentence on probation;
3. Particulars as accurate as possible on the convicted person, his nationality and his domicile or habitual residence;
4. A confirmation of the length of sentence already served;
5. A record drawn up with the convicted person establishing his consent;
6. Other documents that may be of importance for judging the request.

#### SUPPLEMENTARY MATERIAL FOR THE REQUEST

*Article 25.* Should the enforcing State find that the information and documents submitted to it are insufficient, it shall request the necessary supplementary material. It may set an appropriate time-limit for receipt of such material; the time-limit may be extended upon a well-founded request. In the absence of supplementary material, the request shall be decided upon on the basis of the existing information and documents.

#### CORRESPONDENCE

*Article 26.* The correspondence under this Treaty shall be exchanged between the Federal Minister of Justice of the Republic of Austria and the Minister of Justice of the Hungarian People's Republic. The diplomatic channel shall not be thereby excluded.

#### LANGUAGE, AUTHENTICATION

*Article 27.* Requests and communications under this Treaty, as well as attached documents, shall not require translation or authentication.

#### COSTS

*Article 28.* Costs arising from implementation of this Treaty shall not be reimbursed. However, the State requesting transport of a convicted person by air shall bear the costs arising therefrom.

#### DEFINITIONS

*Article 29.* For the purposes of this Treaty, the expression "preventive action" shall mean:

1. In the Republic of Austria, confinement in an institution for psychiatric lawbreakers, for lawbreakers requiring detoxification and for dangerous recidivists;
2. In the Hungarian People's Republic, mandatory therapeutic treatment, mandatory therapy for alcoholics and protective custody.

#### PART IV. FINAL PROVISIONS

*Article 30.* Obligations arising from existing multilateral agreements shall not be affected by this Treaty.

*Article 31.* This Treaty shall be subject to ratification. The instruments of ratification shall be exchanged in Budapest.

*Article 32.* This Treaty shall apply also to judicial decisions which were promulgated before its entry into force.

*Article 33.* 1. This Treaty shall enter into force on the first day of the third month after the exchange of the instruments of ratification.

2. This Treaty shall be concluded for an indefinite period. It may be denounced by either Contracting State in writing through the diplomatic channel on six months' notice.

DONE at Vienna, on 6 May 1985 in two originals, in the German and Hungarian languages, both texts being equally authentic.

For the Republic of Austria:

Dr. HARALD OFNER

For the Hungarian People's Republic:

Dr. MARKÓJA IMRE

---