

No. 32471

**BRAZIL
and
PORTUGAL**

Treaty on extradition. Signed at Brasília on 7 May 1991

Authentic text: Portuguese.

Registered by Brazil on 31 January 1996.

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et
PORTUGAL**

Traité d'extradition. Signé à Brasília le 7 mai 1991

Texte authentique : portugais.

Enregistré par le Brésil le 31 janvier 1996.

[TRANSLATION — TRADUCTION]

TREATY¹ ON EXTRADITION BETWEEN THE GOVERNMENT OF
THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERN-
MENT OF THE PORTUGUESE REPUBLIC

The Government of the Federative Republic of Brazil and
The Government of the Portuguese Republic

Inspired by the ties of friendship and cooperation that govern relations between
the two countries,

Bearing in mind the deep-rooted affinities that enrich relations between their
peoples, and

Desiring to strengthen this special relationship through cooperation in areas of
common interest, specifically in the administration of justice in criminal matters,

Have agreed as follows:

Article I

OBLIGATION TO EXTRADITE

Each Contracting Party agrees to extradite to the other, in accordance with
the provisions of this Treaty, any persons who are wanted for prosecution or the
enforcement of a sentence involving deprivation of liberty for an offence prosecu-
tion of which is within the jurisdiction of the courts of the requesting Party.

Article II

EXTRADITABLE OFFENCES

1. Extraditable offences are offences which are punishable under the laws of
both Parties by a sentence involving deprivation of liberty for a maximum period of
at least one year.

2. Where the request for extradition is for purposes of enforcement of a sen-
tence involving deprivation of liberty, extradition shall be granted only if a period of
at least nine months of the sentence remains to be served.

3. For the purpose of this Article, in determining whether an offence is an
offence against the law of both Contracting Parties:

(a) It shall not matter whether the laws of the Contracting Parties place the acts
or omissions constituting the offence within the same category of offence or denomi-
nate the offence by the same terminology;

¹ Came into force on 1 December 1994, i.e., the first day of the second month following the month of the exchange
of the instruments of ratification, which took place at Brasília on 10 October 1994, in accordance with article XXV (2).

(b) The totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter whether, under the laws of the Contracting Parties, the constituent elements of the offence differ.

4. Where the offence for which extradition is requested has been committed outside the territory of the requesting Party, extradition shall be granted, subject to the provisions of this Treaty:

(a) If the person whose extradition is requested is a national of the requesting Party; or

(b) If the law of the requested Party provides for the punishment of an offence committed outside its territory in similar circumstances.

5. Where extradition of a person is requested for an offence against a law relating to taxation, duties, customs or foreign exchange control, extradition shall not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting State.

6. If the request for extradition includes several separate offences, each of which is punishable under the laws of both Parties by a sentence involving deprivation of liberty, but some of which do not fulfil the condition relating to the length of the sentence, the requested Party may grant extradition also for the latter offences.

Article III

CASES WHERE EXTRADITION IS NOT PERMISSIBLE

1. Extradition shall not be granted in any of the following cases:

(a) If the person whose extradition is requested is a national of the requested Party;

(b) If the offence was committed in the territory of the requested Party;

(c) If there has been a final judgment rendered against the person in the requested Party, or in a third State, in respect of the offence for which the person's extradition is requested and the person has been acquitted or, if convicted, has served the sentence;

(d) If the person whose extradition is requested has, according to the law of either Contracting Party become immune from prosecution or punishment by reason of lapse of time, or for any other reason;

(e) If, according to the law of either Contracting Party, the offence has been the subject of an amnesty;

(f) If the offence is punishable by death or by life imprisonment;

(g) If the person would be liable to be tried by an *ad hoc* court or to serve a sentence handed down by a court of such nature;

(h) If there are substantial grounds for believing that the person whose extradition is requested will be subject to prosecution that will not guarantee the conditions internationally accepted as indispensable for the protection of human rights or will serve a sentence under inhuman conditions;

(i) If, according to the law of the requested Party, the offence is of a political or similar nature;

(j) If there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, sex, religion, nationality or political opinion or that that person's position may be prejudiced by any of those reasons;

(l) If the offence, according to the law of both Contracting Parties, is an offence under military law, but is not also an offence under ordinary criminal law.

2. Offences which are not political offences according to:

(a) The law of the requested Party;

(b) Any international convention to which both Contracting Parties are party, shall not be regarded as political offences.

Article IV

TRIAL BY THE REQUESTED PARTY

1. If the request for extradition cannot be granted because of the existence of any of the grounds provided for in paragraphs 1 (a), 1 (f) or 1 (g) of the preceding article, the requested Party undertakes to have the offender tried by a competent tribunal, in accordance with its law, for the offences which gave rise or which are alleged to have given rise to the request for extradition.

2. For the purposes of the preceding paragraph, the requested Party may ask the requesting Party, if the latter has not supplied this of its own accord, for the information necessary to institute criminal proceedings, specifically the applicable evidence.

Article V

REFUSAL OF EXTRADITION

1. The request for extradition may be refused:

(a) If the competent authorities of the requested Party have decided to refrain from prosecuting the person whose extradition is requested for the offence in respect of which extradition is requested;

(b) If the person sought has been convicted in that person's absence of the offence for which extradition is requested, unless according to the law of the requesting Party that person, upon extradition, has a right to appeal against the conviction or to seek a new trial;

(c) If prosecution is pending in the courts of the requested Party in respect of the offence for which extradition is requested.

2. The requested Party may recommend to the requesting Party that the request for extradition be withdrawn on account of humanitarian reasons, such as the age, health or other personal circumstances of the person sought.

Article VI

RULE OF SPECIALTY

1. A person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of personal liberty in the territory of the requesting Party for any offence committed before or at the time of the extradition other than the one for which extradition was granted.

2. The prohibition outlined in the preceding paragraph shall not apply when:

(a) The requested Party, after hearing the person to be extradited in the course of assessing the request for extradition presented and decided according to the terms established for requests for extradition, gives its consent thereto;

(b) The person to be extradited, having had the right and opportunity to leave the territory of the requesting Party, has remained in it for more than 45 days or has voluntarily returned thereto.

3. If the description of the offence charged in the requesting Party is altered in the course of proceedings, the person extradited shall be proceeded against or sentenced only insofar as the offence under its description is an offence for which extradition could be granted pursuant to this Treaty.

Article VII

RE-EXTRADITION

1. The requesting Party may not re-extradite to a third State a person whom the requested Party has surrendered to it in response to a request for extradition.

2. The prohibition on re-extradition outlined in the preceding paragraph shall not apply:

(a) If, according to the terms established for the request for extradition, the requested Party has been asked for and has provided a court authorization for re-extradition after hearing the person to be extradited;

(b) If the person to be extradited, having the right and opportunity to leave the territory of the requesting Party, remains in it for more than 45 days or voluntarily returns thereto.

3. The requested Party may ask the requesting Party to provide a statement from the person sought regarding whether that person agrees to the re-extradition or is opposed thereto.

Article VIII

CONCURRENT REQUESTS FOR EXTRADITION

1. If several requests for extradition of the same person for the same acts or omissions are received concurrently, preference will be given to the request of the State in whose territory the offence was committed or where the main act was perpetrated.

2. If the requests relate to different acts or omissions, preference shall be given:

(a) Where the offences are of different gravity, to the request relating to the most serious offence, according to the law of the requested Party;

(b) Where the offences are of equal gravity, to the earliest request or, if they were made at the same time, that of the State of which the person sought is a national or resident, or, in other cases, that of the State to which, in accordance with specific circumstances — *inter alia* the existence of a treaty or the possibility of re-extradition from one requesting Party to another — it is understood that preference should be given.

Article IX

COMMUNICATION OF THE DECISION

The requested Party shall inform the requesting Party without delay of its decision concerning the application for extradition, stating, in the event of any complete or partial refusal, the reasons for the refusal.

Article X

CHANNELS OF COMMUNICATION

Requests for extradition and all subsequent correspondence shall be transmitted through the diplomatic channel.

Article XI

REQUIREMENTS FOR THE REQUEST

The request for extradition shall include:

- (a) The name of the person sought;
- (b) A specific mention of that person's nationality;
- (c) Evidence that, in that specific case, that person is subject to the criminal jurisdiction of the requesting Party;
- (d) Evidence, in the event of an offence committed in a third State, that the latter will not seek extradition for the same offence;
- (e) Where the person sought has been convicted in absentia, information that that person may appeal against the decision or seek a new trial once the extradition has been executed.

Article XII

SUPPORTING DOCUMENTS

The request for extradition shall be accompanied by the following documents:

- (a) A warrant, or similar document, for the arrest of the person sought issued by the competent authority;

(b) Any information that would be helpful in identifying and locating the person sought, *inter alia*, an extract from the register of births, marriages and deaths, photographs and fingerprints;

(c) A certified or authenticated copy of the decision ordering the issuance of an arrest warrant, in the case of extradition for criminal proceedings;

(d) A certified or authenticated copy of the judgement, in the event of extradition for enforcement of a sentence, together with a document showing the amount of time remaining to be served, where the latter is not the same as the length of the sentence imposed in the judgement;

(e) A statement of the acts alleged against the person sought with an indication of the date, place and circumstances of the offence and its legal characterization, if these are not stated in the decisions referred to in paragraphs (c) or (d) above;

(f) A copy of the legal texts concerning the characterization of and punishment for the acts alleged against the person to be extradited and of the statute of limitation applicable to the criminal proceedings or punishment, depending on the case;

(g) A statement from the competent authority concerning any acts which may have caused the statute of limitations to be interrupted or suspended, according to the law of the requesting Party;

(h) A copy of the legal texts concerning the possibility of appealing the decision or seeking a new judgement, where the person was convicted in absentia.

Article XIII

EXTRADITION WITH THE CONSENT OF THE PERSON TO BE EXTRADITED

1. A person who has been arrested for the purposes of extradition may state that he agrees to being surrendered immediately to the requesting Party and that he waives the extradition proceedings, after being notified that he has a right to such proceedings.

2. The statement shall be signed by the person to be extradited and by his counsel or appointed attorney.

3. The judicial authority shall make sure that the conditions necessary for granting the extradition have been met and shall hear the person's statement in order to make sure that it has been made freely and, if it has, shall approve it and order that it be transmitted to the requested Party; minutes of these proceedings shall be drawn up.

4. The statement, approved in accordance with the provisions of the foregoing paragraph, shall be irrevocable.

5. The judicial approval is equivalent, for all purposes, to a final decision on the extradition proceedings.

Article XIV

ADDITIONAL PROCEDURES

1. When a request is incomplete or is not accompanied by sufficient documents to permit the requested Party to take a decision, the latter may request that

additional documents or information be provided by a certain deadline; this deadline shall not exceed 60 days.

2. Failure to provide the documents or information requested under the preceding paragraph shall not prevent a decision on the request for extradition from being taken in the light of the information available.

3. If a person who is under arrest in relation to extradition is released from custody as a consequence of the failure of the requesting Party to provide additional information requested pursuant to paragraph 1 of this Article, the requested Party shall notify the requesting Party as soon as practicable.

Article XV

ARREST OF THE PERSON TO BE EXTRADITED

1. The Contracting Parties undertake, once the request for extradition has been granted, to take all necessary measures to ensure that it is executed, including by seeking and arresting the person sought.

2. Arrest of the person sought during the extradition proceedings, and surrender of that person to the requesting Party, shall be governed by the domestic law of the requested Party.

Article XVI

SURRENDER AND REMOVAL OF THE PERSON TO BE EXTRADITED

1. Once the extradition is granted, the requested Party shall inform the requesting Party of where and when the person sought will be surrendered and of the length of time that person has been under arrest for purposes of taking that into account in the period of detention imposed.

2. The requesting Party shall remove the person from the requested Party within a reasonable period of time as determined by the latter and, in any case, within 60 days.

3. The time limit referred to in the preceding paragraph may be extended to the extent required by the specific case, when reasons of *force majeure* communicated between the Contracting Parties for example, if the person to be extradited is suffering from a life-threatening illness — verified by a medical expert — make removal by the deadline impossible.

4. If the deadline referred to in paragraphs 2 and 3 above passes without anyone coming to collect the person, the latter shall be released.

5. The requested Party may refuse to extradite a person who has not been removed within the time period referred to in this article.

Article XVII

POSTPONEMENT OF SURRENDER

1. The fact that the person sought is being tried in the courts of the requested Party or the fact that the person is serving a sentence involving deprivation of liberty

for offences other than those which gave rise to the request for extradition shall not constitute an impediment to the granting of extradition.

2. In the circumstances referred to in the preceding paragraph, surrender of the person shall be postponed until the trial is over or until the sentence has been served.

3. Surrender may also be postponed if a medical expert determines that the person is suffering from a life-threatening disease.

Article XVIII

TEMPORARY SURRENDER

1. In the event that paragraph 1 of the preceding article applies, the person sought may, with the authorization of the court, be temporarily surrendered for execution of the procedural steps, specifically the trial, if the requesting Party demonstrates that the trial cannot be postponed without causing grave prejudice, providing that doing so does not prejudice the course of the proceedings under way in the requested Party and that the requesting Party pledges that, once these proceedings are completed, the person sought will be returned without any conditions.

2. The temporary presence of the person sought in the territory of the requesting Party shall not exceed 60 days and shall be permitted only once.

3. If the person temporarily surrendered was serving a sentence, execution of the sentence shall remain suspended from the date on which the person is surrendered to the representative of the requesting Party until the date on which the person is returned to the authorities of the requested Party.

4. Time spent in detention that is not taken into account in the foreign proceeding shall, however, be taken into account in the sentencing.

Article XIX

SURRENDER OF PROPERTY

1. To the extent permitted by the law of the requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the requesting Party so requests, be surrendered if extradition is granted.

2. The property mentioned in paragraph 1 above shall be surrendered even if the extradition, having been consented to, cannot be carried out due to the escape or death of the person sought.

3. The requested Party may surrender the articles referred to in paragraph 1 above, on condition that they be returned free of charge, if they can be subject to protective measures in the territory of the said Party in the ongoing proceedings, if they are of interest for other reasons or if third parties have rights over them.

Article XX

PROVISIONAL ARREST

1. In case of urgency the Contracting Parties may request the provisional arrest of the person to be extradited, pending the presentation of the formal extradition request.

2. The application for provisional arrest shall indicate that there is an arrest warrant or judgement against the person sought, give a summary of the acts which make up the offence and the date and place where they were committed, indicate the legal precepts applicable and provide all available information regarding the identity, nationality and location of the person.

3. The request for provisional arrest shall be transmitted through the diplomatic channel.

4. The decision on the arrest and its maintenance shall be taken in accordance with law of the requested Party and communicated immediately to the requesting Party.

5. The requested Party shall inform the requesting Party, by the fastest means, of the results of the steps taken for the arrest, mentioning that the person arrested will be released unless it receives a request for extradition within 60 days of the date the person was arrested.

6. Following receipt of the request for extradition, the provisions of article XV, paragraph 2 shall apply to maintenance of the detention.

7. If the request for extradition is received after the deadline referred to in paragraph 5 above, the person shall be released; however, this shall not preclude their being arrested again or extradited.

Article XXI

RECAPTURE

In the event that the person extradited escapes and returns to the territory of the requested Party after being handed over to the requesting Party, the latter may request that the person be recaptured, simply by sending an arrest warrant together with documents showing that the person was extradited but escaped before criminal proceedings were completed or before serving the sentence.

Article XXII

TRANSIT

1. Transit through the territory of either Contracting Party of a person who is not a national of the transit State and who is being extradited from a third State shall be permitted provided that this is not against public order and provided that under the terms of this Treaty, the offence in question warrants extradition.

2. The request for transit shall state the name of the person to be extradited and shall be accompanied by the documents referred to in article XIII, paragraphs (a), (c) or (d) and (e); it shall be transmitted by the diplomatic channel.

3. The authorities of the State of transit shall be responsible for keeping the person to be extradited in custody or under arrest for as long as that person is in its territory.

4. Where air transport is used and no landings are planned in the territory of a Party, a simple communication from the requesting Party shall suffice.

Article XXIII

COSTS

1. Costs relating to extradition shall be borne by the requested Party until the person to be extradited is surrendered to the requesting Party.

2. The following shall be borne by the requesting Party:

- (a) Costs relating to moving the person extradited from one State to the other;
- (b) Costs relating to the transit of the person extradited.

Article XXIV

SETTLEMENT OF DOUBTS

Any doubts or difficulties arising from the application or interpretation of this Treaty shall be settled in consultation between the Contracting Parties.

Article XXV

ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall be subject to ratification.

2. The Treaty shall enter into force on the first day of the second month following the exchange of the instruments of ratification and it shall remain in force for as long as it is not denounced by either party. It shall cease to have effect six months following the day on which notice of termination is received.

DONE at Brasília, on 7 May 1991, in two originals in the Portuguese language, both texts being equally authentic.

For the Government
of the Federative Republic
of Brazil:

FRANCISCO REZEK

For the Government
of the Portuguese Republic:

JOÃO DE DEUS PINHEIRO