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**United States of America
and
Romania**

Extradition Treaty between the United States of America and Romania. Bucharest, 10 September 2007

Entry into force: *8 May 2009 by the exchange of instruments of ratification, in accordance with article 23*

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**États-Unis d'Amérique
et
Roumanie**

Traité d'extradition entre les États-Unis d'Amérique et la Roumanie. Bucarest, 10 septembre 2007

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[ENGLISH TEXT – TEXTE ANGLAIS]

EXTRADITION TREATY
BETWEEN
THE UNITED STATES OF AMERICA
AND
ROMANIA

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The United States of America and Romania (hereinafter referred to as "the Parties"),

Recalling the Treaty of Extradition between the United States of America and Romania, signed at Bucharest on July 23, 1924, and the Supplementary Extradition Treaty, signed at Bucharest on November 10, 1936;

Noting that both the United States of America and Romania currently apply the terms of these Treaties;

Mindful of obligations set forth in the Agreement on Extradition between the United States of America and the European Union, signed at Washington, D.C. on June 25, 2003;

Having due regard for rights of individuals and the rule of law; and

Desiring to provide for more effective cooperation between the Parties in the fight against crime, and, for that purpose, to conclude a new treaty for the extradition of offenders;

Have agreed as follows:

Article 1
Obligation to Extradite

The Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with, found guilty of, or convicted of an extraditable offense.

Article 2
Extraditable Offenses

1. An offense shall be an extraditable offense if it is punishable under the laws in both Parties by deprivation of liberty for a period of more than one year or by a more severe penalty. Where the request is for enforcement of the sentence of a person convicted of an extraditable offense, the deprivation of liberty remaining to be served must be at least four months.

2. An offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, or participation in the commission of any offense described in paragraph 1 of this Article.

3. For the purposes of this Article, an offense shall be an extraditable offense:

(a) whether or not the laws in the Requesting and Requested States place the acts or omissions constituting the offense within the same category of offenses or describe the offense by the same terminology;

(b) whether or not the offense is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; and

(c) whether or not, in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, the laws of the Requesting and Requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities.

4. If the offense has been committed outside of the territory of the Requesting State, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the Requested State provide for the punishment of an offense committed outside its territory in similar circumstances. If the laws of the Requested State do not provide for the punishment of an offense committed outside its territory in similar circumstances, the executive authority of the Requested State, at its discretion, may proceed with extradition provided that all other applicable requirements for extradition are met.

5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request even if the latter offense is punishable by

one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

Article 3
Citizenship

Extradition shall not be refused based on the citizenship of the person sought.

Article 4
Political and Military Offenses

1. Extradition shall not be granted if the offense for which extradition is requested is a political offense.

2. For the purposes of this Treaty, the following offenses shall not be considered political offenses:

(a) a murder or other violent crime against a Head of State of one of the Parties, or of a member of the Head of State's family;

(b) an offense for which both Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;

(c) murder, manslaughter, malicious wounding, inflicting grievous bodily harm, assault with intent to cause serious physical injury, or serious sexual assault;

(d) an offense involving kidnapping, abduction, or any form of unlawful detention, including the taking of a hostage;

(e) placing, using, threatening the use of, or possessing an explosive, incendiary or destructive device capable of endangering life, of causing substantial bodily harm, or of causing substantial property damage; and

(f) a conspiracy or attempt to commit any of the foregoing offenses, or participation in the commission of such offenses.

3. Notwithstanding the terms of paragraph 2 of this Article, extradition shall not be granted if the competent authority of the Requested State determines that the request was politically motivated.

4. The competent authority of the Requested State may refuse extradition for offenses under military law that are not offenses under ordinary criminal law.

5. For the United States of America, the Executive Branch is the competent authority for purposes of this Article.

Article 5
Prior Prosecution
(*Non Bis in Idem*)

1. Extradition shall not be granted when the person sought has been convicted or acquitted in the Requested State for the offense for which extradition is requested.

2. Extradition shall not be precluded by the fact that the authorities of the Requested State have decided:

- (a) not to prosecute the person sought for the acts for which extradition is requested;
- (b) to discontinue any criminal proceedings which have been instituted against the person sought for those acts; or
- (c) to investigate the person sought for the same acts for which extradition is sought.

Article 6
Lapse of Time

Extradition may be denied if prosecution of the offense or execution of the penalty is barred by lapse of time under the laws of the Requesting State. Acts that would interrupt or suspend the prescriptive period in the Requesting State are to be given effect by the Requested State.

Article 7
Capital Punishment

When the offense for which extradition is sought is punishable by death under the laws in the Requesting State and is not punishable by death under the laws in the Requested State, the Requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or, if for procedural reasons such condition cannot be complied with by the Requesting State, on condition that the death penalty, if imposed, shall not be carried out. If the Requesting State accepts extradition subject to the condition attached pursuant to this Article, it shall comply with the condition.

Article 8
Extradition Procedure and Required Documents

1. Requests for extradition and supporting documents shall be submitted through the diplomatic channel, which shall include transmission as provided for in Article 12(4).

2. Requests for extradition shall be supported by:
 - (a) documents, statements, or other types of information that describe the identity and probable location of the person sought;
 - (b) information describing the facts of the offense and a brief procedural history of the case;
 - (c) the relevant text of the law(s) describing the essential elements of the offense for which extradition is requested;
 - (d) the relevant text of the law(s) prescribing punishment for the offense for which extradition is requested;
 - (e) the relevant text of the law(s) describing any time limit on the prosecution or enforcement of the penalty and information describing the application of the law(s) to the offense for which extradition is sought; and
 - (f) the documents, statements, or other types of information specified in paragraphs 3 or 4 of this Article, as applicable.
3. In addition to the requirements in paragraph 2 of this Article, a request for extradition of a person who is charged with an offense shall also be supported by:
 - (a) a copy of the warrant or order of arrest or detention issued by a judge, court, or other competent authority;
 - (b) a copy of the charging document; and
 - (c) such information as would provide a reasonable basis to believe that the person sought committed the offense for which extradition is sought.
4. In addition to the requirements in paragraph 2 of this Article, a request for extradition relating to a person who has been found guilty or convicted of the offense for which extradition is sought shall also be supported by:
 - (a) a copy of the conviction and sentence, or, if the person sought has been found guilty but not sentenced, a statement by a judicial authority as to the finding of guilt;
 - (b) information establishing that the person sought is the person to whom the finding of guilt refers;
 - (c) if the person sought has been sentenced, a statement establishing to what extent the sentence has been carried out; and

- (d) in the case of a person who has been found guilty or convicted in absentia, the documents required by paragraph 3 of this Article and information regarding the circumstances under which the person was absent from the proceedings.

Article 9
Supplemental Information

The Requested State may require the Requesting State to furnish additional information within such reasonable length of time as it specifies, if it considers that the information furnished in support of the request for extradition is not sufficient to fulfill the requirements of this Treaty. Such supplementary information may be requested and furnished directly between the United States Department of Justice and the Ministry of Justice of Romania.

Article 10
Admissibility of Documents

Documents that bear the certificate or seal of the Ministry or Department of Justice, or the Ministry or Department responsible for foreign affairs, of the Requesting State shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization.

Article 11
Translation

All documents submitted by the Requesting State shall be translated into the language of the Requested State, unless otherwise agreed.

Article 12
Provisional Arrest

1. In case of urgency, the Requesting State may request the provisional arrest of the person sought pending presentation of the request for extradition and supporting documentation. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Romania. The facilities of the International Criminal Police Organization (Interpol) also may be used to transmit such a request.

2. The application for provisional arrest shall contain:
- (a) a description of the person sought;

- (b) the location of the person sought, if known;
- (c) a brief statement of the facts of the case, including, if possible, the date and location of the offense(s);
- (d) a description of the law(s) violated;
- (e) a statement of the existence of a warrant or order of arrest or detention or a finding of guilt or judgment of conviction against the person sought; and
- (f) a statement that the request for extradition for the person sought and supporting documentation will follow within the time specified in this Treaty.

3. The Requesting State shall be notified without delay of the disposition of its request for provisional arrest including the reasons for any inability to proceed with the request.

4. Unless good cause is shown to maintain custody, a person who is provisionally arrested shall be discharged upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the Requested State has not received the formal request for extradition and the documents supporting the extradition request as required in Article 8. For this purpose, receipt of the formal request for extradition and supporting documents by the Embassy of the Requested State in the Requesting State, by the date specified in this paragraph, shall constitute receipt by the Requested State.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.

Article 13 Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition.

2. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial. The Requested State shall provide copies of pertinent judicial decisions upon request.

3. If the request for extradition is granted, the authorities of the Requesting and Requested States shall agree on the time and place for the surrender of the person sought.

4. If the person sought is not removed from the territory of the Requested State within the time period prescribed by the law of that State, that person may be discharged from custody, and the Requested State, in its discretion, may subsequently refuse extradition for the same offense(s).

Article 14
Temporary Surrender and Deferred Surrender

1. If the extradition request is granted for a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may temporarily surrender the person sought to the Requesting State for the purpose of prosecution. The person so surrendered shall be kept in custody in the Requesting State and shall be returned to the Requested State after the conclusion of the proceedings against that person, in accordance with conditions to be determined by mutual agreement of the Parties. The time spent in custody in the territory of the Requesting State pending prosecution in that State may be deducted from the time remaining to be served in the Requested State.

2. The Requested State may postpone the extradition proceedings against a person who is being prosecuted or who is serving a sentence in that State. The postponement may continue until the prosecution of the person sought has been concluded or until such person has served any sentence imposed.

Article 15
Requests for Extradition or Surrender Made by Several States

1. If the Requested State receives requests from the Requesting State and from any other State or States for the extradition of the same person, either for the same offense or for different offenses, the executive authority of the Requested State shall determine to which State, if any, it will surrender the person.

2. If Romania receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offense or for different offenses, its judicial authority, or such other authority as it may subsequently designate, shall determine to which State, if any, it will surrender the person.

3. In making its decision under paragraphs 1 and 2, the Requested State shall consider all relevant factors, including, but not limited to:

- (a) whether the requests were made pursuant to a treaty;
- (b) the place where each offense was committed;
- (c) the respective interests of the Requesting States;
- (d) the gravity of the offenses;
- (e) the nationality or citizenship of the victim;
- (f) the possibility of any subsequent extradition between the Requesting States; and

- (g) the chronological order in which the requests were received from the respective Requesting States.

Article 16
Seizure and Surrender of Property

1. To the extent permitted under its law, the Requested State may seize and surrender to the Requesting State all items, including articles, documents, evidence, and proceeds, that are connected with the offense in respect of which extradition is granted. The items mentioned in this Article may be surrendered even when the extradition cannot be effected due to the death, disappearance, or escape of the person sought and may be surrendered prior to the extradition.

2. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such items if they are needed as evidence in the Requested State.

3. The rights of third parties in such items shall be duly respected in accordance with the laws of the Requested State.

Article 17
Rule of Specialty

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:

- (a) any offense for which extradition was granted, or a differently denominated offense based on the same facts as the offense for which extradition was granted, provided such offense is extraditable, or is a lesser included offense;
- (b) any offense committed after the extradition of the person; or
- (c) any offense for which the competent authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph:
 - (i) the Requested State may require the submission of the documentation called for in Article 8; and
 - (ii) the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorize, while the request for consent is being processed.

2. A person extradited under this Treaty may not be the subject of onward extradition or surrender for any offense committed prior to extradition to the Requesting State unless the Requested State consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition or surrender of that person to a third State, if:

- (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
- (b) that person does not leave the territory of the Requesting State within 20 days of the day on which that person is free to leave.

4. For the United States of America, the Executive Branch is the competent authority for purposes of this Article.

Article 18 Simplified Procedures

If the person sought consents to be surrendered to the Requesting State, the Requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of the protection of the rule of specialty.

Article 19 Transit

1. The United States may authorize transportation through its territory of a person surrendered to Romania by a third State, or by Romania to a third State. Romania may authorize transportation through its territory of a person surrendered to the United States by a third State, or by the United States to a third State.

2. A request for transit shall be transmitted through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Romania. The facilities of the International Criminal Police Organization (Interpol) may also be used to transmit such a request to the above-mentioned authorities. The request for transit shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

3. Authorization is not required when air transportation is used by one State and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to

paragraph 2 of this Article, and it may detain the person until the request for transit is received and the transit is effected, as long as the request is received within 96 hours of the unscheduled landing.

Article 20
Representation and Expenses

1. The Requested State shall advise, assist, appear in court on behalf of, and represent the interests of the Requesting State in any proceedings arising out of a request for extradition.

2. The Requesting State shall pay all the expenses related to the translation of extradition documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State in connection with the extradition proceedings.

3. Neither State shall make any pecuniary claim against the other State arising out of the arrest, detention, examination, or surrender of persons under this Treaty.

Article 21
Consultation

1. The Parties may consult with each other in connection with the processing of individual cases and in furtherance of efficient implementation of this Treaty.

2. Where the Requesting State contemplates the submission of particularly sensitive information in support of a request for extradition, it may consult the Requested State to determine the extent to which the information can be protected by the Requested State. If the Requested State cannot protect the information in the manner sought by the Requesting State, the Requesting State shall determine whether the information shall nonetheless be submitted.

Article 22
Application

This Treaty shall apply to offenses committed before as well as after the date it enters into force.

Article 23
Ratification, Entry into Force, and Termination

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force upon the exchange of the instruments of ratification.

3. Upon the entry into force of this Treaty, the Treaty of Extradition between the United States of America and Romania, signed at Bucharest July 23, 1924, and the Supplementary Extradition Treaty, signed at Bucharest November 10, 1936 (together, the "prior Treaties"), shall cease to have any effect. Nevertheless, the prior Treaties shall apply to any extradition proceedings in which the extradition documents have already been submitted to the courts of the Requested State at the time this Treaty enters into force, except that Articles 2, 14(1), and 18 of this Treaty shall be applicable to such proceedings, and Article 17 of this Treaty shall apply to persons found extraditable under the prior Treaties.

4. With respect to any extradition proceedings in which the request for extradition was received by the Requested State but not submitted to its courts before the entry into force of this Treaty, the Requesting State, after entry into force of this Treaty, may amend or supplement the request for extradition as necessary in order for it to be submitted to the courts of the Requested State under this Treaty.

5. Either State may terminate this Treaty at any time by giving written notice to the other State through the diplomatic channel, and the termination shall be effective six months after the date of receipt of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Treaty.

DONE at Bucharest, in duplicate, this tenth day of September, 2007, in the English and Romanian languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:
Nicholas F. TAUBMAN
Ambassador Extraordinary and Plenipotentiary
of the United States of America to Romania

FOR ROMANIA:
Tudor-Alexandru CHIUARIU
Minister of Justice

