

**POLAND – national procedures for extradition**

States Parties are requested to fill in this table with the necessary information and return it to the Secretariat of the PC-OC. The information contained in this table should be updated on a yearly basis.

<p>The competent authority (name of the institution, address, telephone, fax and e-mail where available) responsible for extradition:</p>	<p>Competent authority to receive extradition requests: <b>Minister of Justice-Prosecutor General</b></p> <p><b>Address:</b>                  Ministry of Justice                  National Prosecutor's Office                  Bureau of International Legal Cooperation                  Al. Ujazdowskie 11                  00-950 Warsaw                  tel. 0048 22 523 70 32                  fax.0048 22 628 16 82                  e-mail: <a href="mailto:adamiak@ms.gov.pl">mailto:adamiak@ms.gov.pl</a>  <a href="mailto:pr.bopz@ms.gov.pl">pr.bopz@ms.gov.pl</a></p> <p>Additionally, before the wanted person is extradited and the decision taken by the Minister of Justice, the court having territorial competence (of the circuit level – second tier of Polish judicial system) must adjudicate on the admissibility of extradition. Any incoming request for extradition will be passed on to the competent court via the Ministry of Justice.</p>
<p>Language requirements:</p>	<p>Extradition request and all supporting documents as well as supplementary information shall be translated into <b>Polish</b>.</p>
<p>Time limits:</p>	<p>There are no statutory time limits for the decision on extradition either by the court or the Minister of Justice.</p> <p>The only statutory time requirement relates to the situation envisaged in art. 16 (4) of the European Convention on Extradition dated 1957. In Polish Code of Criminal Procedure this situation is stipulated under art. 605 § 2:</p> <p><i>“§ 2. The court, before a motion for extradition has been filed, may also order the preliminary detention of the prosecuted person for a period not exceeding 40 days, if so requested by the agency of a foreign State which at the same time shall declare that the person concerned has been validly sentenced by a judgement, or a decision for preliminary detention has been issued.”</i></p> <p>In relations with several countries who are not members of the Council of Europe, bi-lateral agreements may stipulate this time limit differently.</p>
<p>Documentation required:</p>	<p>As a rule the documents required to commence the extradition procedure are:</p> <ul style="list-style-type: none"> <li>- extradition request (indicating a statement of the offences for which extradition is requested, the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions);</li> <li>- the original or an authenticated copy of the conviction and sentence or enforceable detention order or decision on provisional arrest;</li> <li>- a copy of the relevant enactments or a statement of the</li> </ul>

	<p>relevant law;</p> <ul style="list-style-type: none"> <li>- identification material (photograph, fingerprints, DNA samples etc.) and information which will help establish his/her nationality.</li> </ul> <p>Some other documents (as a supplementary information) may also be required if, upon the merits of a certain case, the executing court or Minister of Justice so requires.</p>
<p>Statutes of limitation for special offences:</p>	<p>The issue of the prescription (limitation) is envisaged in art. 101, 102 and 103 of the Polish Penal Code of 6<sup>th</sup> June 1997 in a general way. The aforementioned provisions state the following:</p> <p><i>“Article 101. § 1. The amenability to punishment for an offence ceases, if from the time of the commission thereof the following number of years have elapsed:</i></p> <ol style="list-style-type: none"> <li>1) 30 - when the act constitutes a crime of homicide,</li> <li>2) 20 - when the act constitutes other crime,</li> <li>2a) 15 – when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 5 years,</li> <li>3) 10 - when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 3 years;</li> <li>4) 5 – for other misdemeanours.</li> </ol> <p><i>§ 2. The amenability to punishment for an offence prosecuted by way of a private charge ceases after the expiration of one year, from the date on which the injured person learnt of the identity of the perpetrator of the offence and not later, however, than after the expiration of 3 years from the time of its commission.</i></p> <p><i>§ 3. If in the cases provided for in § 1 or 2, the commission depends on the occurrence of a consequence specified in the law, the time of limitation shall run from the date when this consequence has ensued.</i></p> <p><i>Article 102. If in the period specified in Article 101 the proceedings against a person have been instituted, the amenability to punishment for the offence specified in § 1 subsections 1-3 and committed by this person, ceases after the expiration of 10 years, and in other cases after the expiration of 5 years from the end of that period.</i></p> <p><i>Article 103. § 1. A penalty may not be executed if, from the time when the judgement has become final and valid, the following number of years have elapsed:</i></p> <ol style="list-style-type: none"> <li>1) 30 - in case of a sentence to a penalty of deprivation of liberty for a period exceeding 5 years or to a more severe penalty;</li> <li>2) 15 - in case of a sentence to a penalty of deprivation of liberty not exceeding 5 years;</li> <li>3) 10 - in case of a sentence to another penalty.”</li> </ol> <p>There is however a specific provision of art. 105 <b>which regulates the issue of prescription differently in relation to some special offences:</b></p> <p><i>“Article 105. § 1. The provisions of Articles 101 through 103 shall not be applied to crimes against peace, crimes against humanity or war crimes.</i></p> <p><i>§ 2. The provisions of Articles 101 through 103 shall not be applied either to the intentional offence of: homicide, inflicting serious bodily harm, causing serious detriment to health or deprivation of liberty connected with particular torture, perpetrated by a public official in connection with the performance of official duties.”</i></p>
<p>Double criminality requirement:</p>	<p>As a rule, <b>double criminality requirement must be satisfied</b>. Lack of double criminality constitutes mandatory ground for refusal of extradition and this is stipulated in art. 604 § 1(2) of the Polish Code of Criminal Procedure of 6<sup>th</sup> June 1997:</p>

	<p><i>“Article 604. § 1. The extradition is inadmissible if: (...) 2) the act does not have the features of a prohibited act, or if the law stipulates that the act does constitute an offence, or that a perpetrator of the act does not commit an offence or is not subject to penalty (...)”</i></p> <p>The only exception is in relations with those countries who are Member States of the European Union and apply the provisions implementing the EU Framework Decision on the European Arrest Warrant and surrender procedures between the Member States of the European Union of 13 June 2002. This exception relates to the catalogue of 33 offences envisaged in art. 2(2) of the Framework Decision.</p>
<p>Provisions concerning extradition of nationals:</p>	<p>Extradition of Polish nationals is prohibited. Two sets of provisions are applicable in this area: Art. 55 of the Constitution of the Republic of Poland of 2<sup>nd</sup> April 1997 which states the following:</p> <ol style="list-style-type: none"> <li>1. <i>“The extradition of a Polish citizen shall be prohibited, except in cases specified in paras 2 and 3.</i></li> <li>2. <i>Extradition of a Polish citizen may be granted upon a request made by a foreign state or an international judicial body if such a possibility stems from an international treaty ratified by Poland or a statute implementing a legal instrument enacted by an international organisation of which the Republic of Poland is a member, provided that the act covered by a request for extradition:</i> <ol style="list-style-type: none"> <li>1) <i>was committed outside the territory of the Republic of Poland, and</i></li> <li>2) <i>constituted an offence under the law in force in the Republic of Poland or would have constituted an offence under the law in force in the Republic of Poland if it had been committed within the territory of the Republic of Poland, both at the time of its commitment and at the time of the making of the request.</i></li> </ol> </li> <li>3. <i>Compliance with the conditions specified in para. 2 subparagraphs 1 and 2 shall not be required if an extradition request is made by an international judicial body established under an international treaty ratified by Poland, in connection with a crime of genocide, crime against humanity, war crime or a crime of aggression, covered by the jurisdiction of that body.</i></li> <li>4. <i>The extradition of a person suspected of the commission of a crime for political reasons but without the use of force shall be forbidden, so as an extradition which would violate rights and freedoms of persons and citizens.</i></li> <li>5. <i>The courts shall adjudicate on the admissibility of extradition.”</i></li> </ol> <p>The provision of art. 55 corresponds to art. 604 § 1 (1) of the Polish Code of Criminal procedure of 6<sup>th</sup> June 1997:</p> <p><i>“Article 604. § 1. The extradition is inadmissible if: 1) the person to whom such a motion refers, is a Polish citizen or has been granted the right of asylum in the Republic of Poland.”</i></p>
<p>Possibility and requirements for</p>	<p>Simplified extradition is currently possible under <b>two schemes</b>:</p>

simplified extradition:	<ol style="list-style-type: none"> <li>1. <u>The European Arrest Warrant</u> applicable in relations with those countries who are Member States of the European Union and apply the provisions implementing the EU Framework Decision on the European Arrest Warrant and surrender procedures between the Member States of the European Union of 13 June 2002. All the requirements are stipulated in the aforementioned act and are identical for all the member States including Poland.</li> <li>2. <u>Simplified extradition pursuant art. 66 of the Convention of 1990 implementing Schengen Agreement of 1985</u>. Due to this provision: <p><i>“Art. 66 (1). If the extradition of a wanted person is not clearly prohibited under the laws of the requested Contracting Party, that Contracting Party may authorize extradition without formal extradition proceedings, provided that the wanted person agrees thereto in a statement made before a member of the judiciary after being heard by the latter and informed of the right to formal extradition proceedings. The wanted person may have a lawyer present during such a hearing.</i></p> <p><i>(2). In cases of extradition under paragraph 1, wanted persons who explicitly state that they will relinquish the protection offered by the rule of specialty may not revoke that statement.”</i></p> <p>The aforementioned provision is applied via a domestic legislation, namely art. 603a of the Polish Code of Criminal procedure which states the following:</p> <p><i>“Article 603a. § 1. If an international agreement to which the Republic of Poland is a party so stipulates, the request by a foreign state for the application of a preventive detention replaces a request for extradition.</i></p> <p><i>§ 2. In the case referred to in § 1, the state prosecutor shall, during the examination, inform the prosecuted person of the possibility of his consent to extradition combined with waiving the use of restrictions specified in Articles 596 and 597. If the prosecuted person agrees to submit such a statement, the state prosecutor shall refer the case to a circuit court for the area where the proceedings are pending.</i></p> <p><i>§ 3. The court decides, in a session, on preventive detention of the prosecuted person, receives the statement of consent to extradition or to extradition combined with waiving the use of restrictions specified in Articles 596 and 597, and issues an order on the admissibility of extradition.</i></p> <p><i>§ 4. The consent of the prosecuted person and the waiver, referred to in § 2 may be withdrawn, of which the prosecuted person shall be instructed.</i></p> <p><i>§ 5. The court shall transfer, without delay, the valid and final order together with the files of the case, to the Minister of Justice, who decides on the extradition of the person.</i></p> <p><i>§ 6. If the statement referred to in § 3 has not been submitted, or the court has found that a circumstance specified in Article 604 § 1 has occurred, or when the session has been adjourned for a period in excess of 7 days, the provisions of Articles 602, 603 and 605 shall be applied.”</i></p> </li> </ol>
Means of communication:	As a rule, Poland accepts requests (together with supporting documents and supplementary information) sent by post in paper form. However in urgent cases, it can accept also faxed or e-mailed versions of the aforementioned documents provided that originals will be sent later by post in due time.

Other particularly relevant information (such as national legislation, national guides on procedure, links to national web sites...):