

# **EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA**

The Government of the Republic of Austria and the Government of the United States of America,

Recalling the Convention between the United States of America and Austria for the extradition of fugitives from justice, and exchange of notes concerning the death penalty, signed at Vienna, January 31, 1930, and the Supplementary Convention thereto signed at Vienna, May 19, 1934;

Noting that both the Republic of Austria and the United States of America currently apply the terms of that Treaty;

Desiring to provide for more effective cooperation between the two States in the suppression of 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 Contracting 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 or found guilty of an extraditable offense.

## **Article 2 Extraditable Offenses**

(1) Extradition shall be granted for offenses which are subject under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty.

(2) Extradition for the enforcement of a prison sentence or a preventive measure restricting liberty ordered by a criminal court for one or more of the offenses referred to in paragraph 1 shall be granted only if at least three months of the sentence or a preventive measure remain to be served.

(3) If extradition has been granted pursuant to paragraph 1 or 2, it shall also be granted for any other offenses even if the time conditions established in those paragraphs do not apply, provided that all other requirements for extradition are met.

(4) For the purposes of this article, extradition shall be granted:

- a) whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;
- b) in criminal cases relating to taxes, customs duties, currency control, and import and export of commodities, whether or not the laws of the Contracting States provide for the same kinds of taxes, or customs duties or controls on currency or on the import or export of the same kinds of commodities; and
- c) 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.

(5) Subject to the conditions set out in paragraph 1, 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, an offense.

(6) Extradition may be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

## **Article 3 Nationality**

(1) Neither Party shall be bound to extradite its own nationals, but the executive authority of the Requested State shall have the power to extradite such persons if, in its discretion, it be deemed proper to do so and provided the law of the Requested State does not so preclude.

(2) If extradition is refused solely on the basis of the nationality of the person sought, the Requested State shall, at the request of the Requesting State, submit the case to its authorities for prosecution.

## **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 to be political offenses:

- a) murder;
- b) any other willful crime against the person of a Head of State of one of the Contracting States, or of a member of the Head of State's family; and

c) an offense for which both Contracting States 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.

(3) Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

(4) The Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

#### **Article 5 Jurisdiction of the Requested State**

(1) Extradition may be refused if the person sought is proceeded against in the Requested State for the offense for which extradition is requested.

(2) Notwithstanding paragraph 1, extradition may be granted if the competent authorities of the Requested State have decided not to prosecute the person sought for the offense for which extradition is requested or decided to discontinue any criminal proceedings which have been initiated against the person for those acts.

#### **Article 6 Non Bis in Idem**

(1) Extradition shall not be granted when the person sought has been convicted or discharged with final and binding effect by the competent authorities in the Requested State for the offense for which extradition is requested.

(2) An acquittal or a discharge for lack of jurisdiction is not an obstacle to extradition.

#### **Article 7 Lapse of Time**

Extradition shall not be granted if the prosecution or the carrying out of the sentence has become barred by lapse of time under the laws of the Requesting State.

#### **Article 8 Capital Punishment**

(1) 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 refuse extradition unless the Requesting State provides an assurance that the death penalty will not be imposed (in the case of a person sought for trial) or carried out (in the case of a person already sentenced to death at the time extradition is requested).

(2) In instances in which a Requesting States provides an assurance in accordance with paragraph 1 of this article, the Requested State shall grant extradition, and the Requesting State shall fully comply with the assurance.

#### **Article 9 Convictions in Absentia**

If the person sought has been found guilty in absentia, the executive authority of the Requested State may refuse extradition unless the Requesting State provides it with such information or assurances as the Requested State considers sufficient to demonstrate that the person was afforded an adequate opportunity to present a defense or that there are adequate remedies or additional proceedings available to the person after surrender.

#### **Article 10 Extradition Procedures and Required Documents**

(1) All requests for extradition shall be submitted through the diplomatic channel.

(2) The requests for extradition shall be supported by:

- a) Documents, statements, or other types of information which describe the identity, the nationality and probable location of the person sought;
- b) Information describing the facts of the offense and the procedural history of the case;
- c) The text of the law describing the essential elements of the offense for which extradition is requested;
- d) The text of the law prescribing the punishment for the offense;
- e) A statement of the provisions of law describing any time limit on the prosecution; and
- f) The documents, statements, or other types of information specified in paragraph 3 or 4 of this article, as applicable.

(3) A request for extradition of a person who is sought for prosecution shall be supported by:

- a) A copy of the warrant or order of arrest issued by a judge or other competent authority;
- b) A copy of the charging document, if any; and
- c) Documents setting forth sufficient information to provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the warrant of arrest.

(4) A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall be supported by:

- a) A copy of the judgment of conviction or, if such copy is not available, a statement by a judicial authority that the person has been found guilty;
- b) Information establishing that the person sought is the person to whom the finding of guilt refers; and
- c) A copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out.

(5) Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization.

#### **Article 11 Supplementary Information**

(1) If, at any stage of the extradition proceedings, the Requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfill the requirements for extradition, that State may request the necessary supplementary information and may fix a reasonable time-limit for the receipt thereof.

(2) If the supplementary information furnished is not sufficient or is not received within the time specified, and if, as a consequence, the person sought is discharged, such discharge shall not preclude the Requesting State from making a new request for the extradition of the person sought.

(3) Where the person sought is discharged from custody, the Requested State shall notify the Requesting State as soon as practicable.

#### **Article 12 Translation**

Unless otherwise agreed as appropriate in a specific case, all documents shall be translated by the Requesting State into the language of the Requested State. Translation need not be certified.

#### **Article 13 Provisional Arrest**

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

(2) The application for provisional arrest shall contain:

- a) A description of the person sought and information concerning the person's nationality;
- b) The location of the person sought if known;
- c) A brief statement of the facts of the case, including, if possible, the time and location of the offense;
- d) A description of the laws violated and the applicable penalty;
- e) A statement of the existence of a warrant of arrest or finding of guilt or a judgment of conviction against the person sought; and
- f) a statement that a request for extradition for the person sought will follow.

(3) The Requesting State shall be notified without delay of the extent to which its request has been complied with.

(4) A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the Requesting State if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 10.

(5) Termination of provisional arrest pending extradition pursuant to paragraph 4 is not an obstacle to rearrest and extradition if the extradition request is received later.

#### **Article 14 Decision and Surrender**

(1) The Requested State shall promptly notify the Requesting State of its decision on the request for extradition. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial.

(2) If the request for extradition is granted, the authorities of the Contracting Parties shall decide on the time and place for the surrender of the person sought. The Requested State shall make known for what period the person sought was in custody pending extradition.

(3) If the person sought is not removed from the territory of the Requested State within the time prescribed by the law of that state or, if the Requested State has no such law, within a reasonable period of time to be determined by the Requested State, that person may be discharged from custody. In such cases the Requested State may subsequently refuse extradition for the same offense.

(4) If circumstances beyond its control prevent a Contracting Party from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting Party before the expiration of the time limit. In such a case, the competent authorities of the Contracting Parties may decide upon a new date for the surrender.

#### **Article 15 Postponed and Temporary Surrender**

(1) If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may postpone the surrender of the person sought. The postponement may continue until the prosecution of the person has been concluded and any sentence has been served.

(2) In such cases, the Requested State may also 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 agreement of the Contracting States. The time spent in custody in the territory of Requesting State shall be counted toward the penalty imposed or to be imposed in the Requested State.

#### **Article 16 Deferral of Extradition Proceedings**

In the case of a person who is being prosecuted in the Requested State, that state may defer the extradition proceedings until the prosecution has been concluded.

#### **Article 17 Requests for Extradition Made by Several States**

(1) If the Requested State receives requests from the other Contracting State and from any other State or States for the extradition of the same person, either for the same offense or for different offense, the executive authority of the Requested State shall determine to which State it will surrender the person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to:

- a) treaty obligations;
- b) the place where each offense was committed;
- c) the respective interests of the Requesting States;
- d) the gravity of the offenses;
- e) the possibility of further extradition between the Requesting States; and
- f) the chronological order in which the requests were received from the Requesting States.

(2) If the requests are based on different offenses and if precedence is given to the request of a third state, the Requested State may report to what extent it waives the rule of speciality with respect to possible further extradition.

#### **Article 18 Seizure and Surrender of Property**

(1) To the extent permitted under its law, the Requested State may seize all articles, documents, and evidence connected with the offense for which extradition is sought. Such items shall be surrendered to the Requesting State if extradition is granted. The items mentioned in this article may be surrendered even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.

(2) The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the items 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 property shall be duly respected.

(4) When items are surrendered pursuant to this article, restrictive regulations concerning the import and export of articles and foreign currency shall not apply.

#### **Article 19 Rule of Specialty**

(1) A person extradited under this Treaty may not be detained, tried, punished, or subjected to any other restriction of his personal liberty in the Requesting State in relation to an offense, except for:

- a) an offense for which extradition has been granted or an offense based on the same facts on which extradition was granted, provided such offense is extraditable or is a lesser included offense; or
- b) an offense committed after the surrender of the person; or
- c) an offense for which the executive authority of the Requested State consents to the person's detention, trial, punishment, or other restriction of personal liberty. For this purpose, the Requested State may require the submission of the documents called for in Article 10 and a legal record of any statements made by the extradited person in respect of the request for consent. 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 is being processed.

(2) A person extradited under this Treaty may not be extradited to a third State for an offense committed prior to his surrender unless the surrendering State consents.

(3) The restrictions set forth in paragraphs 1 and 2 of this article shall not apply if the extradited person:

- a) leaves the territory of the Requesting State after extradition and voluntarily returns or is lawfully returned to it; or
- b) does not leave the territory of the Requesting State within 30 days from the day on which that person is free to leave.

(4) The provisions of this article shall not prevent the Requesting State from taking measures necessary under its law to effect the deportation of the extradited person from its territory or to prevent expiration of a right of action through lapse of time.

#### **Article 20** **Simplified Extradition**

If extradition is not obviously precluded by the laws of the Requested State and if the person sought consents to extradition and surrender without formal extradition proceedings, the Requested State may surrender the person without formal proceedings. In this case Article 19 shall not be applicable, and the Requested State shall so inform the Requesting State.

#### **Article 21** **Transit**

(1) Either Contracting State may authorize transportation through its territory of a person who is being extradited to the other State by a third State. A request for transit shall be made through the diplomatic channel or directly between the Ministry of Justice of Austria and the United States Department of Justice. The facilities of the International Criminal Police Organization (INTERPOL) may be used to transmit such a request. It 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.

(2) No authorization is required where air transportation is used by one Contracting State and no landing is scheduled on the territory of the other State. If an unscheduled landing occurs on the territory of the other Contracting State, that State may require the request for transit as provided in paragraph 1. That Contracting State shall detain the person to be transported until the request for transit is received and the transit is effected, so long as the request is received within 96 hours of the unscheduled landing.

#### **Article 22** **Assistance and Expenses**

(1) The appropriate authorities of the Requested State shall advise the Requesting State and represent its interests by all legal means within their power in extradition proceedings before the competent judges and officials.

(2) The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of 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 sought under this Treaty.

#### **Article 23** **Consultation**

The Ministry of Justice of Austria and the United States Department of Justice may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

#### **Article 24** **Application**

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

#### **Article 25** **Ratification and Entry Into Force**

(1) This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) This Treaty shall enter into force on the first day of the third month following the month in which the exchange of the instruments of ratification took place.

(3) Upon the entry into force of this Treaty, the Treaty between the Government of Austria and the Government of the United States of America for the extradition of fugitives from justice, and exchange of notes concerning the death penalty, signed at Vienna on January 31, 1930, and the Supplementary Extradition Convention between the Government of Austria and the Government of the United States, signed at Vienna on May 19, 1934, shall cease to have

effect. Nevertheless, the prior Treaty and Supplementary Convention 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 Article 2 of this Treaty shall be applicable to such proceedings. Articles 15 and 19 of this Treaty shall apply to persons found extraditable under the prior Treaties.

**Article 26**  
**Termination**

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

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

DONE at Washington, in duplicate, this eighth day of January, 1998, in the German and English languages, both texts being equally authentic.

For the Government of the Republic of Austria:

**Dr. Nikolaus Michalek m.p.**

For the Government of the United States of America:

**Janet Reno m.p.**