


Country:  Luxembourg

Year: 1996

Available languages: **English**

Keywords:  Treaties (Extradition)

EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE GRAND DUCHY OF LUXEMBOURG

The Government of the United States of America and the Government of the Grand Duchy of Luxembourg,

Recalling the Treaty of Extradition between the Contracting States, signed at Berlin, October 29, 1883, as amended by the Supplementary Extradition Convention between the Contracting States, signed at Luxembourg, April 24, 1935;

Noting that both the Government of the United States of America and the Government of the Grand Duchy of Luxembourg currently apply the terms of that Treaty, as amended, and

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 States 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 [16] it is punishable under the laws in both Contracting States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. For the purpose of this paragraph, an offense shall include:

(a) an attempt to commit, or participation or complicity in the commission of, an offense; and

(b) an "association of wrongdoers" as provided by the laws of Luxembourg, or a "conspiracy" as provided by the laws of the United States, to commit an offense.

2. Where the request for extradition is for a person sought for the execution of a sentence, extradition shall only be granted if a penalty of at least six months imprisonment remains to be served.

3. In determining whether an offense is an extraditable offense, the Contracting States:

(a) shall consider only the essential elements of the offense punishable under the laws of both States and shall disregard that the respective laws do not place the offense within the same category of offenses or describe the offense by the same terminology; and

(b) shall not consider as an essential element of an offense punishable in the United States an element such as interstate transportation or use of the mails or of [17] other facilities affecting interstate or foreign commerce, since such an element is for the purpose of establishing jurisdiction in a United States court.

4. An offense shall be an extraditable offense regardless of where the act or acts constituting the offense were committed.

5. If, in addition to an offense extraditable under paragraph 1, the request for extradition includes an offense which is punishable by deprivation of liberty under the laws of both Contracting States, but which does not fulfill the condition with regard to the amount of punishment which may be imposed, the Requested State shall grant extradition for this offense, provided that all other requirements for extradition are met.

6. Extradition may be denied if prosecution of the offense or execution of the penalty has been barred by lapse of time under the laws of the Requested State. Acts constituting an interruption or suspension of the time-bar in the Requesting State shall be taken into consideration insofar as possible.

Article 3

Nationality

1. Neither Contracting State shall be bound to extradite its own nationals, but the Executive Authority of the United States shall have the power to extradite such persons [18] if, in its discretion, it be deemed proper to do so.

2. If extradition is refused solely on the basis of the nationality of the persons 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) a murder or 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;

(b) 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;

(c) murder, manslaughter, malicious wounding or inflicting grievous bodily harm;

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

(e) placing or using an explosive, incendiary or destructive device or substance [19] capable of endangering life or causing grievous bodily harm;

(f) an attempt to commit, or participation or complicity in the commission of, any of the foregoing offenses; and

(g) an "association of wrongdoers" as provided by the laws of Luxembourg, or a "conspiracy" as

provided by the laws of the United States, to commit any of the foregoing offenses.

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

4. The executive authority of the Requested State shall refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

Article 5

Fiscal Offenses

1. The executive authority of the Requested State shall have discretion to deny extradition when the offense for which extradition is requested is a fiscal offense.

2. For purposes of this Treaty, a fiscal offense is:

(a) an offense relating to the reporting and payment of taxes or customs duties, or

(b) an offense relating to currency exchange laws.

3. For purposes of this Treaty, an offense described in paragraph 2 may nonetheless be considered [20] not to be a fiscal offense if it relates to drug trafficking, a crime of violence, or other criminal conduct of a particularly serious nature without regard to whether extradition is sought for such other criminal activity.

Article 6

Prior Prosecution

1. Extradition shall not be granted when the person sought has been found guilty, 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 in the Requested State have decided not to prosecute the person sought for the acts for which extradition is requested, or to discontinue any criminal proceedings which have been instituted against the person sought for those acts.

Article 7

Capital Punishment and Humanitarian Concerns

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 shall refuse extradition unless the Requesting State provides such assurances as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. [21]

2. Notwithstanding the provisions of the present Treaty, the executive authority of the Requested State may refuse extradition for humanitarian concerns unless the Requesting State provides such assurances as the Requested State considers sufficient to take into account the humanitarian concerns.

Article 8

Extradition Procedures and Required Documents

1. Every request for extradition shall be submitted through the diplomatic channel.

2. Each request shall be supported by:

(a) documents, statements, or other types of information which describe the identity, 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 describing the punishment for the offense;

(e) the text or a statement of the provisions of law describing any time limit on the prosecution or the service of the sentence and information concerning the interruption or suspension of the time limit; and

(f) the documents, statements, or other types of information specified in paragraph 3 or [22] paragraph 4 of this Article, as applicable.

3. A request for extradition of a person who is sought for prosecution shall also 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; and

(c) such information as would justify the committal for trial of the person if the offense had been committed in the Requested State.

4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall also 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; or

(d) if the person has been found guilty of an offense but no sentence has been imposed, a statement affirming that the Requesting State intends to impose a sentence and a copy of the warrant for the [23] arrest of the person; and

(e) in the case of a person who has been found guilty in absentia, the documents required by paragraph 3.

Article 9

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 of its law with respect to extradition, that State may request the necessary supplementary information and may fix a time-limit for the receipt thereof.

2. If the person whose extradition is requested is under arrest and the supplementary information

furnished is not sufficient or is not received within the time specified, the person may be released from custody but such release shall not preclude the Requesting State from making a new request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State as soon as practicable.

Article 10

Admissibility of Documents

The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings [24] if:

- (a) in the case of a request from the United States, they are authenticated by the Department of State of the United States;
- (b) in the case of a request from Luxembourg, they are certified by the diplomatic or consular officer of the United States resident in Luxembourg, as provided by the extradition laws of the United States; or
- (c) they are certified or authenticated in any other manner accepted by the law of the Requested State.

Article 11

Translation

All documents submitted by Luxembourg shall be translated into English. All documents submitted by the United States shall be translated into French.

Article 12

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 United States Department of Justice and the Ministry of Justice of Luxembourg. 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 [25] 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;
- (e) a statement of the existence of a warrant of arrest or a finding of guilt or 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 disposition of its application and the reasons for any denial.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 8.

5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later [26] 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 Contracting 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 such time as may be prescribed by the law of that State, he may be discharged from custody, and the Requested State may subsequently refuse extradition for the same offense.
5. The period of time spent in detention in the Requested State pursuant to the extradition request of the Requesting State shall be subtracted from the period of detention to be served in the Requesting State. The Contracting States agree to communicate to one another such information relating to the period of detention.

Article 14

Temporary and Deferred Surrender

1. If the extradition request is granted [27] in the case of 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 agreement of the Contracting States. The time spent in custody in the territory of the Requesting State will 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 proceeded against or who is serving a sentence in that State. The postponement may continue until the proceedings against the person sought have been concluded or any sentence has been served.

Article 15

Requests for Extradition Made by Several States

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 offenses, the executive [28] 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) whether the requests were made pursuant to 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 of the victim;
- (f) the possibility of further extradition between the Requesting States; and
- (g) the chronological order in which the requests were received from the 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, and evidence, 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.
2. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the items [29] 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.

Article 17

Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting State except for:
 - (a) the offense for which extradition has been granted or a differently denominated offense based on the same facts on which extradition was granted, provided such offense is extraditable or is a lesser included offense;
 - (b) an offense committed after the extradition of the person; or
 - (c) an offense for which the executive authority of the Requested State consents to the person's detention, trial, or punishment. For the purpose of this subparagraph, the Requested State may require the submission of the documents called for in Article 8 and a document containing the statements of the person extradited. The person extradited may be detained by the Requesting State for 75 days, or for such longer period of time as the Requested State may authorize, while the request is being processed. [30]
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. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition 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 15 days of the day on which that person is free to leave.

Article 18

Simplified Extradition

If the person sought consents to surrender to the Requesting State, the Requested State may surrender the person as expeditiously as possible without further proceedings.

Article 19

Transit

1. Either Contracting State may authorize transportation through its territory of a person surrendered to the other State by a third State. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of Luxembourg. The facilities of the International Criminal Police Organization (Interpol) [31] 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 may be detained in custody during the period of transit. Transit may be refused for a national of the Requested State and for a person sought for prosecution or to serve a penalty of deprivation of liberty imposed by the authorities of that State.

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

Article 20

Representation and Expenses

1. The Requested State shall, by all legal means within its power, advise, assist, appear in court and represent the interests of the Requesting State, in any proceeding arising out of a request for extradition.

2. The Requesting State shall bear the expenses related to the translation of [32] 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 21

Consultation

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

Article 22

Application

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

Article 23

Ratification and Entry into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Luxembourg as soon as possible.
2. This Treaty shall enter into force on the first day of the second month after the exchange of the instruments of ratification.
3. Upon the entry into force of this Treaty, the Treaty of Extradition between the United States [33] of America and the Grand Duchy of Luxembourg, signed at Berlin on October 29, 1883, as amended by the Supplementary Extradition Convention signed at Luxembourg on April 24, 1935, shall cease to have any effect. Nevertheless, the prior Treaty as amended 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 14 and 17 of this Treaty shall apply to persons found extraditable under the prior Treaty.

Article 24

Termination

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

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Washington, in duplicate, this first day of OCTOBER, 1996 in the English and French languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG

[Back to country view](#) [View all countries](#)