

Administering Department:
Documents sent to Federal
Parliament in connection with
Fax. Co. Secretariat: please
insertion of signatures and date of printing.



1999B00194

to: Legislative Services Section,
Office of Legislative Drafting, Attorney-General's
Department.



Extradition (Poland) Regulations 1999

Statutory Rules 1999 No. 4

203

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Extradition Act 1988*.

Dated **9 SEP 1999** 1999.

WILLIAM DEANE

Governor-General

By His Excellency's Command,

AMANDA VANSTONE

Minister for Justice and Customs



Extradition (Poland) Regulations 1999

Statutory Rules 1999 No. 1

203

made under the

Extradition Act 1988

Contents

	Page
1 Name of Regulations	2
2 Commencement	2
3 Declaration of Poland as an extradition country	2
4 Application of Act	2
Schedule 1 Treaty between Australia and the Republic of Poland on Extradition	 3

1 Name of Regulations

These Regulations are the *Extradition (Poland) Regulations 1999*.

2 Commencement

These Regulations commence on 2 December 1999.

3 Declaration of Poland as an extradition country

Poland is declared to be an extradition country.

4 Application of Act

The *Extradition Act 1988* applies to Poland subject to the Treaty between Australia and the Republic of Poland on Extradition, a copy of which is set out in Schedule 1.

Schedule 1 Treaty between Australia and the Republic of Poland on Extradition

(regulation 4)

Australia and the Republic of Poland

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty on extradition,

HAVING DECIDED to conclude the present treaty and having appointed their respective representatives to this end,

HAVE AGREED as follows:

Article 1

Obligation to extradite

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Treaty, persons against whom the competent authorities of the Requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence.

Article 2

Extraditable offences

1. For the purpose of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by imprisonment for a period of more than one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.

2. 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 denominate the offence by the same terminology;
- (b) the totality of the acts or omissions alleged against the person whose extradition is sought 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.

3. Where extradition is sought for an offence against a law relating to taxation, customs duties, foreign exchange or other revenue matter, extradition may 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 Party.

4. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

5. Extradition shall be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is sought was committed, provided that:

- (a) it was an offence under the laws of both Contracting Parties at the time of the acts or omissions constituting the offence; and
- (b) it was an offence under the laws of both Contracting Parties at the time the request for extradition was made.

Article 3
Exceptions to extradition

1. Extradition shall not be granted if:
- (a) the offence for which extradition is sought is a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of that person's family;
 - (b) there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
 - (c) the offence for which extradition is sought is an offence exclusively under military law;
 - (d) final judgement has been passed in the Requested Party or in a third state in respect of the offence for which the person's extradition is sought;
 - (e) the person claimed has, according to the law of either the Requesting or the Requested Party, become immune by reason of lapse of time from prosecution or the execution of the penalty or punishment; or
 - (f) the case of the person, on being extradited to the Requesting Party, would be liable to be dealt with in that State by a court or tribunal:
 - (i) that has been specially established for the purpose of dealing with that person's case; or
 - (ii) that is only exceptionally authorised to deal with the cases of persons accused of the offence for which extradition is sought.

2. Each of the Contracting Parties shall have the right to refuse extradition of its nationals. If the Requested Party does not extradite its national, it shall at the request of the Requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

3. Extradition may be refused if:

- (a) the competent authorities of the Requested State have decided not to institute proceedings or to terminate pending proceedings for the offence in respect of which extradition is sought;
- (b) the offence for which extradition is requested is punishable by death under the law of the Requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the Requested Party or is not normally carried out, unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death-penalty will not be carried out;
- (c) the offence is regarded by the law of the Requested Party as having been committed in whole or in part within its territory; or
- (d) a prosecution in respect of the offence for which extradition is sought is pending in the Requested Party against the person whose extradition is sought.

4. Where it appears to the Requested Party that extradition would be totally incompatible with humanitarian considerations because of exceptional circumstances including the state of health or old age of the person sought, the Contracting Parties shall consult to mutually determine whether the extradition request should continue.

Article 4
Extradition request and required documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 5.
2. The request shall be supported by:
 - (a) the original or an authenticated copy of the conviction, sentence immediately enforceable, warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the Requesting Party. Where a sentence has been imposed, there shall be a statement of the extent to which the sentence has not been carried out, or, where a sentence has not been imposed, there shall be a statement affirming that it is intended to impose a sentence;
 - (b) a statement of the offences for which extradition is requested. The time, place and particulars of the conduct alleged to constitute the offence and their legal descriptions shall be set out; and
 - (c) the text of the relevant enactments or, where this is not possible, a statement of the relevant law including any law relating to the limitation of proceedings and as accurate a description as possible of the person claimed, together with any other information which will help to establish his or her identity and nationality.
3. The request for extradition and documents submitted in its support shall be accompanied by a certified translation into the language of the Requested Party.

Article 5

Authentication of supporting documents

1. Documents that, in accordance with Article 4, accompany a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested Party.
2. A document is authenticated for the purposes of this Treaty if:
 - (a) it is signed or certified by a Judge, Public Prosecutor, Magistrate or a competent officer of the Requesting Party; and
 - (b) it is sealed with an official seal of the Requesting Party. In the case of the Republic of Poland an official seal means the seal of the Minister of Justice. In the case of Australia an official seal means the seal of a Minister of State.

Article 6

Additional information

1. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.
2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requesting Party from making a fresh request for the extradition of the person.
3. Where the person is released from custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 7
Provisional arrest

1. In case of urgency a Contracting Party may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 4 authorising the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the Requested Party, a statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the person claimed and the Requesting Party shall be promptly notified of the result of its request.

4. A person arrested upon such an application may be set at liberty upon the expiration of 45 days from the date of that person's arrest if a request for extradition, supported by the documents specified in Article 4, has not been received.

5. The release of a person pursuant to paragraph 4 shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 8
Conflicting requests

1. Where requests are received from two or more States for the extradition of the same person, the Requested Party shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all relevant circumstances and, in particular, to:

- (a) if the requests relate to different offences — the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person; and
- (e) the possibility of subsequent extradition to another State.

Article 9 Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through the diplomatic channel.

2. Subject to the provisions of Article 10, where extradition is granted, the Requested Party shall surrender the person at a place convenient to the Requesting Party.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may refuse to extradite that person for the same offence.

4. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited it shall notify the other Contracting Party. The two Contracting Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 shall apply.

Article 10

Postponement of surrender and temporary surrender

1. The Requested Party may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he or she may be proceeded against by that Party or, if he or she has already been convicted, in order that he or she may serve his or her sentence in the territory of that Party for an offence other than that for which extradition is requested.
2. The Requested Party may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting Party in accordance with conditions to be mutually determined by the Parties.

Article 11

Surrender of property

1. To the extent permitted under 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 shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed or for other reasons.
3. Where the law of the Requested Party or the rights of third parties so require, any articles so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 12
Rule of speciality

1. Subject to paragraph 3, a person extradited under this Treaty shall not be detained or tried, or be subjected to any other restriction of his or her personal liberty, in the territory of the Requesting Party for any offence committed before his or her extradition other than:

- (a) an offence for which extradition was granted or any other extraditable offence for which the person could be prosecuted on the basis of the facts upon which the request for extradition was based, provided that the offence does not carry a penalty which is more severe than that which could be imposed for the offence for which extradition was sought; or
- (b) any other extraditable offence in respect of which the Requested Party consents.

2. A request for the consent of the Requested Party referred to in paragraph 1 (b) shall be accompanied by the documents mentioned in Article 4.

3. Restrictions under paragraph 1 do not apply if the person has had an opportunity to leave the territory of the Requesting Party and has not done so within 45 days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the Requesting Party after leaving it.

Article 13
Surrender to a third State

1. Where a person has been surrendered to the Requesting Party by the Requested Party, the first-mentioned Party shall not surrender that person to any third State for an offence committed before that person's surrender unless:

- (a) the Requested Party consents to that surrender; or

-
- (b) the person has had an opportunity to leave the Requesting Party and has not done so within 45 days of final discharge in respect of the offence for which that person was surrendered by the Requested Party or has returned to the territory of the Requesting Party after leaving it.

2. Before acceding to a request pursuant to sub-paragraph (1) (a), the Requested Party may request the production of the documents mentioned in Article 4.

Article 14 Transit

1. Where a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the Contracting Party to which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.

2. Upon receipt of such a request the Requested Contracting Party shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.

3. Permission for the transit of a person shall, subject to the law of the Requested Contracting Party, include permission for the person to be held in custody during transit.

4. Where a person is being held in custody pursuant to paragraph 3, the Contracting Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.

5. The Contracting Party to which the person is being extradited shall reimburse the other Contracting Party for any expense incurred by that other Contracting Party in connection with the transit.

Article 15
Expenses

1. Expenses incurred in the territory of the Requested Party by reason of extradition shall be borne by that Party.
2. The Requesting Party shall bear the expenses incurred in conveying the person from the territory of the Requested Party.

Article 16
Multilateral obligations

Nothing in this Treaty shall affect any obligations which have been or shall in the future be assumed by the Contracting Parties under any multilateral convention.

Article 17
Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.
2. On the date of this Treaty entering into force, the Treaty between Great Britain and the Republic of Poland for the Mutual Extradition of Fugitive Criminals done at Warsaw on 11 January 1932 shall cease to be in force between Australia and the Republic of Poland.
3. Extradition requests submitted after the entry into force of this Treaty shall be governed by this Treaty whatever the date of the commission of the offence for which extradition is requested.
4. Either Contracting Party may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which the notice is delivered.

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

DONE at Canberra on the third day of June, one thousand, nine hundred and ninety-eight in the English and Polish languages, each text being equally authentic.

FOR AUSTRALIA:

Amanda Vanstone

FOR THE REPUBLIC OF POLAND:

Maciej Kozlowski

Note

1. Made by the Governor-General on ^L 1999, and notified in the *Commonwealth of Australia Gazette* on _L 1999.

9 September
16 September