

N° 2641.

ESPAGNE ET LETTONIE

Convention d'extradition et d'assistance judiciaire en matière pénale.
Signée à Riga, le 8 mars 1930.

SPAIN AND LATVIA

Convention regarding Extradition
and Legal Assistance in Criminal
Matters. Signed at Riga, March
8, 1930.

¹ TRADUCTION. — TRANSLATION.

No. 2641. — CONVENTION² BETWEEN THE REPUBLIC OF LATVIA AND THE KINGDOM OF SPAIN REGARDING EXTRADITION AND LEGAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT RIGA, MARCH 8, 1930.

French official text communicated by the Latvian Minister for Foreign Affairs. The registration of this Treaty took place March 16, 1931.

THE PRESIDENT OF THE REPUBLIC OF LATVIA and HIS MAJESTY THE KING OF SPAIN, being desirous of regulating the juridical relations between the two States with regard to extradition and legal assistance in criminal matters, have decided to conclude a Convention for this purpose and have appointed as Plenipotentiaries :

THE PRESIDENT OF THE REPUBLIC OF LATVIA :

His Excellency M. Germain ALBAT, Minister Plenipotentiary, Secretary-General at the Ministry of Foreign Affairs ;

HIS MAJESTY THE KING OF SPAIN :

His Excellency Don Eduardo Garcia COMIN, His Envoy Extraordinary and Minister Plenipotentiary ;

Who, having communicated their full powers, found in good and due form, have agreed on the following provisions :

CHAPTER I.

Article I.

EXTRADITION.

The Contracting Parties undertake to surrender to each other, on requisition being made, persons found within the territory of one Party who are being proceeded against or who have been convicted by the judicial authorities of the other Party for any offence for which extradition may be authorised under the laws of the Party to which application is made :

(a) If the offence in question, according to the laws of the two States (even if applicable only in part of their territory), is punishable with at least one year's imprison-

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Riga, December 2, 1930. Came into force January 2, 1931.

ment or a heavier penalty, or, if the person claimed has been sentenced for the same offence to imprisonment for at least six months or to a heavier penalty ;

(b) If the offence has been committed within the territory of the State making application ;

(c) If the prosecution of the offence is not reserved for its own Courts by the law of the State to which application is made.

Where the offence has been committed outside the territory of the State making application, extradition shall only be granted if the law of the State applied to authorises, under similar circumstances, legal proceedings in respect of the same offences committed outside its territory.

Extradition shall also be granted for attempts to commit the said offences or for participation therein, when these are punishable under the laws of the two Contracting Parties.

Article 2.

In no case shall the Contracting Parties be bound to deliver up to each other their own nationals

If the person claimed has submitted a request for naturalisation in the State to which application is made before his extradition was requested, the decision concerning the requisition for extradition may be postponed until the request for naturalisation has been disposed of.

Article 3.

OFFENCES FOR WHICH EXTRADITION MAY NOT BE GRANTED.

Extradition shall not be granted.

(a) For political offences or acts connected therewith.

The State to which application is made shall alone decide whether an offence is of this nature.

An offence committed or attempted against the person of the head of a State shall not be considered as a political offence or as an act connected with such an offence, when it constitutes murder or homicide, or an attempt at murder or homicide, or participation therein.

(b) For purely military offences.

(c) For press offences, properly so called.

(d) For offences against Customs, revenue or other financial laws.

(e) For offences in respect of which proceedings can only be taken on a charge being brought by the injured party and which may be stayed on the withdrawal of the charge.

(f) If exemption from prosecution or punishment has been acquired by lapse of time under the laws in force in all parts of the territory of one of the Contracting Parties or under the laws of the State in which the offence was committed, before the accused was arrested or interrogated, or if it is impossible to proceed against him or to carry out the sentence for other legal reasons.

(g) If the person claimed is being proceeded against for the same offence in the State to which application is made, or if he has already been finally discharged, sentenced, acquitted or pardoned for the same offence, unless the law of the State in question allows the reopening of criminal proceedings in consequence of new facts.

(h) If the person claimed is to be tried by an extraordinary court.

(i) If, in the State to which application is made, the person claimed has been condemned to death.

Article 4.

REQUISITION FOR EXTRADITION.

The requisition for extradition shall be made through the diplomatic channel.

It shall be accompanied by the indictment, warrant of arrest or any other judicial document equivalent to the latter, or the judgment against the person claimed. The originals or certified copies of these documents shall be presented. They shall indicate briefly the offence complained of and its special character and denomination, and shall be accompanied by the text of the penal law applicable to the offence of the State making the requisition, and mentioning the penalty which it involves. Where possible they shall be accompanied by a description of the person whose surrender is claimed, and by his photograph or other particulars which might help to establish his identity.

In the case of offences against property, the amount of the actual damage caused shall be indicated, or, when that is possible, the damage which the offender intended to cause.

Article 5.

The documents mentioned in the preceding Article shall be drawn up in the official language of the State making application, in the form required by the laws of the latter and bearing the official seal. They shall be accompanied by a translation in French made or certified correct by the diplomatic representative of the Party making application, who shall sign them and affix his seal thereto.

Article 6.

SUPPLEMENTARY EXPLANATIONS.

If there is any doubt as to whether the offence for which extradition is requested comes under the provisions of the present Convention, explanations shall be asked of the State making application, and extradition shall only be granted when the explanations furnished are of a nature to dispel such doubt.

In no case shall the State making application be obliged to produce evidence of the guilt of the person whose surrender is claimed.

The State to which application is made may in each case fix a period within which supplementary information must be produced; such period may, however, be extended if a request is made to that effect accompanied by a statement of the reasons therefor.

Article 7.

MEASURES WITH A VIEW TO ENSURING EXTRADITION.

On the arrival of the requisition for extradition, accompanied by the documents referred to in Articles 4 and 5, the State to which application is made shall take all necessary steps to arrest the person claimed and to prevent his escape, unless it appears at once that extradition cannot be granted.

Article 8.

TEMPORARY ARREST.

In urgent cases the person claimed may be provisionally detained, even before the requisition for surrender has been submitted, on any notification forwarded by post or telegraph, provided

that reference is made to the existence of a warrant of arrest or a judgment and that the offence is also indicated therein. This notification may be addressed direct by the Tribunal or competent authority of the State making application to the competent authority of the State to which application is made. The authority making application must, however, confirm the notification telegraphed within a period of eight days.

The competent authorities of each of the Contracting Parties may, even in the absence of such notification, effect the temporary arrest of any person discovered in their territory whose description has been given by the authorities of the other Party or who is entered as wanted by the police in their respective bulletins or registers.

The authority which has proceeded to the arrest of a person in conformity with paragraphs 1 and 2 shall inform without delay the authority applying for the arrest, at the same time mentioning the place of detention.

If, within a period of fifteen days from the date on which this information was forwarded in conformity with the above provisions, the authorities of the other Contracting Party have not stated that the surrender of the person arrested will be asked for, the latter may be set at liberty.

Article 9.

The person arrested may likewise be set at liberty if the requisition for extradition accompanied by the documents in support mentioned in Articles 4 and 5 is not received within a period of six weeks from the date on which the intimation of arrest provided for in paragraph 3 of the preceding Article was made.

Should further explanations have been asked for in conformity with Article 6, the person arrested may also be set at liberty if these explanations are not given to the State to which application is made within the reasonable period fixed or extended by it.

Article 10.

TWO OR MORE REQUISITIONS FOR EXTRADITION.

If the person whose extradition is requested by one of the Contracting Parties is also claimed by one or more other States, the State to which application is made shall be free to surrender him either to the State of which he is a national, or to the State in whose territory the offence was committed.

If the State of which the person claimed is a national is not among the States making application, the State applied to may inform it of the requisitions for extradition received from the other States giving it a period of fifteen days in which to intimate whether it also intends to apply for extradition. The provisions of Article 9, paragraph 1, shall also be applicable to its requisition for extradition. Otherwise the person claimed shall be delivered up to the State in whose territory the most serious offence was committed, and if the offences are of equal gravity, to the State whose requisition for extradition was first received.

These provisions shall not affect any undertakings entered into previously by either Contracting State with other States.

Article 11.

POSTPONEMENT OF EXTRADITION.

If a person claimed is being proceeded against or has been convicted in the territory of the State to which application is made for an offence other than that which has led to the requisition for extradition, or if he is in custody there for other reasons, his extradition may be postponed until the proceedings are concluded, or until he has served his sentence or the penalty has been remitted, or until his detention for other reasons is at an end.

This postponement shall not prevent a decision being given without delay in regard to the extradition, unless for special reasons which shall be notified immediately to the State making application.

Article 12.

TEMPORARY SURRENDER OF A PERSON CLAIMED.

If the postponement of extradition mentioned in the preceding Article might, however, under the laws of the State making application result in exemption from prosecution or punishment being acquired by lapse of time or any other serious obstacle to the proceedings, the temporary surrender of the person claimed may, unless there are special considerations forbidding such action be granted on condition that the person delivered up be sent back as soon as the legal investigation proceedings on account of which the person was temporarily claimed are concluded in the State making application.

Article 13.

PERIOD WITHIN WHICH THE EXTRADITION GRANTED MUST BE EFFECTED.

If extradition has been granted, the applicant State, which shall procure the necessary authorisations for conveyance as soon as possible, must take over the person claimed within three months of the date on which it receives notice that extradition has been granted. On the expiry of this period the person in question may be set at liberty.

Article 14.

EXTENSION OF THE EFFECTS OF EXTRADITION.

A person surrendered may only be proceeded against or punished in the State to which extradition has been granted or be delivered up to a third country for an offence other than that for which his extradition was granted, and committed before extradition :

(a) If the State which granted extradition consents thereto. This consent may not be refused if extradition for the offence in question is provided for in the present Convention. The State which surrendered the offender may require that this consent be applied for in the manner prescribed for requisitions for extradition, with the documents in support mentioned in Articles 4 and 5. The State which has obtained consent shall inform the other of the final result of the proceedings by transmitting to it a copy of the judgment ;

(b) If, having been at liberty to leave the territory of the State to which he was surrendered during the week following his definitive release, he did not do so or if he returned there subsequently.

Article 15.

CONVEYANCE OF OFFENDERS.

If the extradition of an offender takes place between one of the Contracting Parties and a third State, the other Party shall allow him to be conveyed through its territory on the simple production of the original or a certified copy of one of the documents mentioned in Article 4.

The provision relating to the authorisation of extradition shall also apply to such conveyance.

The person surrendered shall be conveyed by agents of the Party applied to, under such conditions and by such means as it may determine.

If within a period of one month from the date on which the State making application has been informed that extradition has been granted, such State does not produce proof of consent to conveyance granted by the State through whose territory the person claimed is to be conveyed, the authorisation shall be null and void.

CHAPTER II.

LEGAL ASSISTANCE IN CRIMINAL MATTERS.

Article 16.

GENERAL PROVISIONS.

In criminal matters the Contracting Parties shall afford each other legal assistance. They shall in particular serve documents relating to criminal procedure on persons within their territory and carry out measures relating to preliminary legal investigations, such as the hearing of witnesses, the taking of expert opinion, the drawing up of affidavits, searches and the seizing of articles, and they shall transmit to each other judicial documents and articles serving as evidence of the crime.

Sentences and summonses to appear for trial emanating from the courts of one of the Contracting Parties and referring to nationals of the other Party shall not, however, be served on such nationals. Similarly, a national of one of the Contracting Parties may not be subjected to an enquiry as an accused person at the request of the other Party.

The request for legal assistance shall be drawn up in the official language of the State making application, shall bear the seal of the authority making application and be transmitted direct to the Ministry of Justice of the State applied to by the Ministry of Justice of the State making application or, in the case of criminal military procedure, by the Supreme Administration of military justice. The provisions of Article 5 regarding translation shall also apply to the request and to the documents annexed thereto.

A request for legal assistance in criminal matters shall be complied with in accordance with the laws of the State in the territory of which the legal investigation measure asked for is to take place. The record relating thereto shall not be translated into the official language of the State making application.

Legal assistance in criminal matters may be granted within the limits provided for by the laws of each State, even in cases in which according to the provisions of the present Convention, there is no obligation to grant extradition.

Article 17.

SUMMONING AND ATTENDANCE OF PERSONS IN THE OTHER CONTRACTING STATE.

If in a criminal case pending before the courts of one Contracting State, the personal attendance of a witness or an expert who happens to be in the territory of the other Contracting State is considered necessary or desirable, the authorities of the latter shall communicate to him the request which will be sent to him for this purpose.

The costs connected with the personal attendance of a witness or expert shall be borne by the State making application and the request shall indicate the amount to be allocated to the witness or expert as travelling expenses and subsistence allowance, together with the amount of the advance which may be paid to him by the State to which the application is made, subject to repayment by the State making application.

No witness or expert of any nationality whatsoever who is in the territory of one of the Contracting Parties and who, on being called upon by the other Party, shall appear of his own free will before the courts of the latter, may be proceeded against there or detained for previous offences or on the pretext of participation in the acts forming the subject of the case in which he is appearing.

These persons shall, however, lose this privilege if, although free to do so, they have not left the territory of the State making application within one week from the time when their presence in the courts is no longer required.

If the person summoned is in custody in the territory of the State applied to, he may be called upon to appear, subject to an undertaking being given that he will be sent back as soon as possible. Such a request may only be refused for special reasons, and, more particularly, if the person summoned expressly declares his opposition thereto.

Similarly, under the conditions laid down above, the conveyance and the return of a person in custody in a third country shall be allowed through the territory of either Contracting Party if the other Contracting Party considers it necessary to confront him with the person who is being proceeded against or to hear him as a witness.

Article 18.

HANDING OVER OF ARTICLES SERVING AS PROOF OF THE CRIME.

The authorities of the two Contracting Parties shall deliver up to each other, if requested to do so, the articles which an accused person has obtained as a result of his offence or which may serve as proof of the offence, and this delivery shall take place even in cases in which the said articles are liable to be seized or confiscated.

If these articles are in the possession of the accused at the time of his extradition or conveyance, they shall as far as possible be handed over at the time at which the extradition or conveyance takes place. They shall be delivered up even when the surrender, after having been granted, could not be effected owing to the death or escape of the accused person. Delivery shall also extend to all articles of the same nature which the accused may have concealed or deposited in the country granting extradition and which may subsequently be discovered.

Nevertheless, the rights of third parties over the articles in question shall be reserved, and such articles shall, at the end of the trial, be returned as soon as possible and free of charge to the State applied to.

The State which has been asked to deliver up these articles may keep them temporarily if it considers them necessary for the purpose of a preliminary criminal investigation. It may also, when handing them over, reserve to itself the right to have them restored for the same purpose, undertaking in its turn to restore them as soon as possible.

Article 19.

COMMUNICATION OF CONVICTIONS AND EXTRACTS FROM THE JUDICIAL RECORD OF PREVIOUS CONVICTIONS.

The Contracting Parties undertake to communicate half-yearly to each other convictions having the force of law or extracts from all final judgments, including conditional sentences, passed by their judicial authorities on nationals of the other Party, in so far as they are entered under the laws in force, in their records of previous convictions or judicial registers.

They shall also communicate to each other any further decisions concerning the said judgments which are entered in the record of previous convictions or judicial registers.

The authorities of either Contracting Party responsible for keeping the records of previous convictions or judicial registers shall furnish without charge to the authorities of the other Party, upon their request, information concerning particular cases based on the records of previous convictions or the judicial registers.

The communications mentioned above shall be exchanged direct between the Ministry of Justice at Riga, on the one hand, and the Ministry of Justice and Worship at Madrid, on the other.

Article 20.

COSTS OF LEGAL ASSISTANCE IN CRIMINAL MATTERS.

The expenses occasioned by a requisition for extradition or by any other legal assistance in criminal matters shall be borne by the Party on whose territory they were incurred.

The authorities of the Party to which application is made shall, however, communicate to the Party making application the amount of these expenses with a view to their reimbursement by the person liable to pay them. The amounts collected from the latter shall be the property of the State to which application is made up to the sum for which that State has furnished proof of expenditure.

Fees paid for expert opinions of any kind and also expenses occasioned by the summoning or appearance of persons in custody in the territory of the State applied to and costs of conveyance in transit shall form an exception to this rule. All these expenses shall be borne by the State making application.

The State making application shall also bear the cost of temporary surrender and that of return mentioned in Article 12 of the present Convention.

CHAPTER III.

Article 21.

FINAL PROVISIONS.

The present Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Riga. It shall come into force one month after the exchange of ratifications and shall remain in force until one of the Contracting Parties notifies the other six months in advance of its intention to terminate the Convention.

In faith whereof the Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done in duplicate at Riga, March 8, one thousand nine hundred and thirty.

(L. S.) (Signed) ALBAT.

(L. S.) (Signed) E. GARCIA COMIN.