

N° 2943.

ITALIE ET VENEZUELA

Traité d'extradition et d'assistance
judiciaire en matière pénale. Signé
à Caracas, le 23 août 1930.

ITALY AND VENEZUELA

Treaty of Extradition and Judicial
Assistance in Criminal Matters.
Signed at Caracas, August 23,
1930.

TEXTE ITALIEN. — ITALIAN TEXT.

N° 2943. — TRATTATO¹ DI ESTRADIZIONE E DI ASSISTENZA GIUDIZIARIA IN MATERIA PENALE TRA L'ITALIA E IL VENEZUELA. FIRMATO A CARACAS, IL 23 AGOSTO 1930.

Textes officiels italien et espagnol communiqués par le ministre des Affaires étrangères d'Italie et le ministre des Affaires étrangères du Venezuela. L'enregistrement de ce traité a eu lieu le 25 avril 1932.

SUA MAESTÀ IL RE D'ITALIA e SUA ECCELLENZA IL PRESIDENTE DEGLI STATI UNITI DEL VENEZUELA, desiderando di regolare le questioni relative all'extradizione dei delinquenti e all'assistenza giudiziaria in materia penale, e di concludere un trattato a questo effetto, hanno nominato loro plenipotenziari :

SUA MAESTÀ IL RE D'ITALIA :

L'Eccellentissimo signor Dottor Antonio CAVICCHIONI, Suo Inviato straordinario e Ministro Plenipotenziario in Venezuela ;

SUA ECCELLENZA IL PRESIDENTE DEGLI STATI UNITI DEL VENEZUELA :

L'Eccellentissimo Signor Dottor Pedro ITRIAGO CHACÍN, Suo Ministro per le Relazioni Estere ;

i quali, dopo essersi reciprocamente comunicati i rispettivi pieni poteri, trovati in buona e debita forma, hanno convenuto negli articoli seguenti :

Articolo 1.

Le Alte Parti Contraenti si impegnano a far ricercare, arrestare e consegnarsi reciprocamente le persone che, imputate o condannate dalla competente autorità giudiziaria dei due Paesi, per alcuno dei reati indicati nel seguente articolo, si trovino sul territorio dell'altro.

Articolo 2.

L'extradizione sarà concessa per gli autori e i complici di delitti comuni, per i quali sia stata applicata una pena restrittiva della libertà personale non inferiore a sei mesi, o per i quali, secondo la legge dello Stato richiedente, possa essere applicata una pena restrittiva della libertà personale non inferiore ad un anno.

L'extradizione potrà essere concessa, in vista di particolari circostanze, anche per delitti non compresi nella prima parte del presente articolo, quando lo permettano le leggi degli Stati Contraenti.

¹ L'échange des ratifications a eu lieu à Rome, le 4 mars 1932.

TEXTE ESPAGNOL. — SPANISH TEXT.

Nº 2943. — TRATADO¹ DE EXTRADICION Y DE ASISTENCIA JUDICIAL EN MATERIA PENAL ENTRE ITALIA Y VENEZUELA. FIRMADO EN CARACAS, EL 23 DE AGOSTO DE 1930.

Italian and Spanish official texts communicated by the Italian Minister for Foreign Affairs and the Minister for Foreign Affairs of Venezuela. The registration of this Treaty took place April 25, 1932.

SU EXCELENCIA EL PRESIDENTE DE LOS ESTADOS UNIDOS DE VENEZUELA y SU MAJESTAD EL REY DE ITALIA, en el deseo de reglamentar las cuestiones relativas a la extradición de los delincuentes y a la asistencia judicial en materia penal, y de concluir un Tratado con este objeto, han nombrado sus Plenipotenciarios :

SU EXCELENCIA EL PRESIDENTE DE LOS ESTADOS UNIDOS DE VENEZUELA :

Al Excelentísimo Señor Doctor Pedro ITRIAGO CHACÍN, Ministro de Relaciones Exteriores,

SU MAJESTAD EL REY DE ITALIA :

Al Excelentísimo Señor Doctor Antonio CAVICCHIONI, su Enviado Extraordinario y Ministro Plenipotenciario en Venezuela ;

Quienes, después de haber canjeado sus respectivos plenos poderes, y de haberlos hallado en buena y debida forma, han convenido en los artículos siguientes :

Artículo 1.

Las Altas Partes Contratantes se comprometen a hacer buscar, arrestar y entregarse recíprocamente las personas que, sindicadas o condenadas por la competente autoridad judicial de uno de los dos Países, por alguno de los delitos indicados en el artículo siguiente, se encontraren en el territorio del otro.

Artículo 2.

Se concederá la extradición de los autores y cómplices de delitos comunes, condenados a una pena restrictiva de la libertad personal no inferior a seis meses, o a quienes, según las leyes del Estado requeriente, pueda aplicárseles una pena restrictiva de la libertad personal no inferior a un año.

Podrá concederse la extradición en vista de circunstancias particulares, aun por delitos no comprendidos en la primera parte del presente artículo, cuando le permitan las leyes de los Estados contratantes.

¹ The exchange of ratifications took place at Rome, March 4, 1932.

¹ TRANSLATION.

No. 2943. — TREATY OF EXTRADITION AND JUDICIAL ASSISTANCE
IN CRIMINAL MATTERS BETWEEN ITALY AND VENEZUELA.
SIGNED AT CARACAS, AUGUST 23, 1930.

HIS MAJESTY THE KING OF ITALY and HIS EXCELLENCY THE PRESIDENT OF THE UNITED STATES OF VENEZUELA, being desirous of settling questions connected with the extradition of certain offenders and with judicial assistance in criminal matters, and of concluding a Treaty for that purpose, have appointed as their Plenipotentiaries :

HIS MAJESTY THE KING OF ITALY :

His Excellency Dr. Antonio CAVICCHIONI, His Envoy Extraordinary and Minister Plenipotentiary in Venezuela ;

HIS EXCELLENCY THE PRESIDENT OF THE UNITED STATES OF VENEZUELA :

His Excellency Dr. Pedro ITRIAGO CHACÍN, His Minister for Foreign Affairs ;

Who, having communicated to each other their full powers, found in good and due form, have agreed on the following Articles :

Article 1.

The High Contracting Parties undertake to seek, arrest and surrender to each other any persons who are being proceeded against or have been convicted by the competent judicial authority of one of the two countries for any of the offences indicated in the following Article, and who may be in the territory of the other Party.

Article 2.

Extradition shall be granted in respect of those guilty, as principals or accomplices, of ordinary offences for which they have been sentenced to imprisonment in any form for a term of not less than six months, or which, under the laws of the State making application, are punishable with imprisonment in any form for a term of not less than one year.

In consideration of special circumstances, extradition may also be granted for offences not covered by the first part of the present Article, provided the laws of the Contracting States permit.

Article 3.

When the act constituting the offence was committed or attempted outside the territory of the High Contracting Parties, the request for extradition may be complied with if the laws of the country making application and of the country applied to permit of judicial proceedings in respect of such an offence committed abroad.

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

Article 4.

The High Contracting Parties shall not grant the extradition of their own nationals, but they undertake to proceed against them in cases where their own laws provide for the institution of proceedings in respect of the offence.

Article 5.

Extradition shall not be granted :

- (1) For unintentional offences or for offences caused through carelessness, negligence or unskilfulness or through the non-observance of regulations, orders or instructions ;
- (2) For acts that are offences under the press laws only ;
- (3) For purely military offences which are punishable only under military law ;
- (4) For political offences or offences connected with a political offence. An attack on the person of the Head of the State shall not be considered to be a political offence or an act connected with such an offence when the attack constitutes the offence of homicide, even if, for reasons over which the person committing the act has no control, the offence is not consummated.

The authorities of the State applied to shall alone be competent to judge of the political nature of the offence.

Extradition shall not be granted if, under the law of the State applied to, exemption from prosecution or punishment has been acquired by lapse of time.

Article 6.

If criminal proceedings have been instituted against the person whose extradition is requested or if the person in question is already in custody for another offence committed in the country in which he is, his surrender may be postponed until the conclusion of the proceedings, or, in the event of a conviction, until the expiry of the sentence.

Article 7.

A person whose extradition has been granted may be tried for any other offence committed prior to his extradition if such other offence is connected with the offence in respect of which the extradition was requested, except as otherwise provided in Article 5.

In the case of an offence not so connected, however, the State to which extradition is granted shall request the State which grants it to extend the effect of the extradition granted to the offence not connected with the offence for which the extradition was granted.

Consent for such an extension shall not, however, be necessary if, after being acquitted or having served the sentence for the offence in respect of which he was extradited, the person extradited remains for more than thirty days in the territory of the applicant State or returns thereto.

The person extradited may not, in respect of offences committed prior to his extradition, be surrendered to a third State unless :

- (a) Either the person extradited requests to be so surrendered, in which case the request shall be communicated to the Government which granted his extradition ;
- (b) Or the State which has granted the extradition consents to the re-extradition or, when granting the extradition, made it conditional on the undertaking to re-surrender the person extradited to another State.

Article 8.

Requisitions for extradition shall be forwarded by the Italian Ministry of Justice, through the diplomatic channel, to the Venezuelan Ministry of Internal Affairs ; and by the Venezuelan Ministry of Internal Affairs, through the diplomatic channel, to the Italian Ministry of Justice.

Article 9.

Extradition shall be granted in virtue of a certificate of conviction or a warrant of arrest or any other paper having the effect of a warrant, stating the nature and degree of gravity of the offence and the provisions of the criminal law which have been or may be applied.

The originals or certificated copies of the papers in question shall be forwarded in the form prescribed by the laws of the State making application, together with a copy of the text of the laws which have been or may be applied, and, if possible, a description of the person whose extradition is demanded, and any other particulars which may assist in establishing his identity.

The requisition and other papers shall be drawn up in the language of the State making application.

Extradition shall be effected in accordance with the law of the State applied to.

Article 10.

In urgent cases, provisional arrest may be allowed, provided the diplomatic agents of the State making application undertake to submit the relevant papers in due time, on receipt of a declaration, if necessary telegraphic, certifying the existence of one of the papers mentioned in the preceding Article.

The judicial authorities and diplomatic agents of the country which proposes to apply for extradition shall be authorised to make the declaration referred to above direct to the Italian Ministry of Justice or to the Venezuelan Ministry of Internal Affairs.

Any person placed under provisional arrest shall be provisionally released if the State applied to has not received the requisition and the papers mentioned in the preceding Article within one hundred days following the date of arrest.

This time-limit shall be extended to one hundred and twenty days if the person to be surrendered is stated to be a dangerous criminal.

Article 11.

If the extradition of a person is requested at the same time by several States, and if the requests relate to the same offence, the extradition shall be granted to the State in whose territory the offence was committed.

If several States have requested the extradition of the same person in respect of different offences, preference shall be given to the State in whose territory the most serious offence was committed.

In the case of offences of equal gravity, preference shall be given to the request first received.

If, however, one of the States making application is the State of which the person whose extradition is requested is a national, preference shall be given to that State, provided, that under its laws proceedings can also be taken against the person in question for the offences committed in the territory of other States.

These rules concerning preference shall not be followed if the State applied to is bound under the terms of an earlier treaty to observe a different order of preference.

Article 12.

All money and effects found at the time of arrest in the possession of the person whose extradition is required shall be seized, and, after an inventory has been drawn up, shall be forwarded to the State making application. Money and effects of which the arrested person was legitimately in possession shall also be handed over, should they come after the arrest into the hands of the authorities of the State applied to, even if they were in the possession of third parties.

The effects handed over shall not be confined to articles acquired as a result of the offence for which extradition is claimed, but shall include everything that may serve as evidence of the offence, and shall be given up even if it is impossible to effect extradition owing to the escape or death of the offender.

Nothing in this Article shall affect the rights of third parties over any of the confiscated articles; these shall be restored to them free of charge when the course of the proceedings makes it possible to do so.

Article 13.

All expenses occasioned by the requisition for extradition, and by the arrest, examination, and conveyance of the person extradited, shall be borne by the State making application, and shall be refunded by that State in accordance with the vouchers.

Article 14.

If the State making application has not, within one hundred and fifty days from the day on which it was informed that the offender was at its disposal, taken charge of the person whose extradition was granted, the person in question shall be set at liberty.

A new extradition of the same person shall not be granted on the same grounds.

Article 15.

Permission of the transit across the territory of the High Contracting Parties of persons who are not nationals of the country of transit, but are being surrendered by another country, shall be granted immediately on receipt of a request, submitted in accordance with the present Convention, from the authorities of the country applying for extradition. Permission for transit shall be given, without any judicial formality, by the competent Ministry of the country requested to grant it, provided that the offence is not one of those for which, under the terms of the present Convention, extradition is not granted, and that no serious reasons of public order form an obstacle.

The extradited person under arrest shall be conveyed by the speediest means and under the escort of agents of the country applied to for transit.

All transit expenses shall be borne by the State making application.

Article 16.

No person who is surrendered by the Venezuelan Government to the Italian Government on the ground that he is charged with an offence punishable with the death penalty or with the penalty of imprisonment for life (*ergastolo*) may, as the result of proceedings against him, be sentenced to either of the aforementioned penalties; the penalty of imprisonment for a term of 30 years or 25 years respectively shall be substituted therefor.

When, however, a person has previously been irrevocably sentenced and is surrendered by the Venezuelan Government to the Italian Government, the death penalty or the penalty of imprisonment for life to which he has been sentenced shall automatically be commuted to the penalty of imprisonment for a term of thirty years or twenty-five years respectively.

A certified copy of the irrevocable sentence shall be transmitted to the Venezuelan Government, for attachment to the relevant documents submitted to the Federal Court of Cassation of the Republic, which is the competent court in matters relating to extradition.

Article 17.

In criminal matters, the judicial authority of either Contracting State may, by means of letters rogatory, request the judicial authority of the other State to conduct a judicial examination or to supply a copy of the papers connected with the case or to transmit the *corpus delicti* or any documents in the possession of the authorities of the State applied to. Such request shall be complied with unless there are special reasons to the contrary, subject to the undertaking that the objects and documents in question shall be returned as soon as possible.

Article 18.

Letters rogatory shall be transmitted through the diplomatic channel. Letters rogatory shall be drawn up in the official language of the State making application, and shall not require translation, legalisation, or any form of certification.

Article 19.

If, in criminal proceedings, the personal appearance of a witness or expert is necessary, the summons by the judicial authority shall be served by the State applied to, unless there are special reasons to the contrary.

The expenses connected with any such appearance shall in each individual case be agreed upon between the Governments of the State making application and the State applied to.

Article 20.

While his presence is necessary to the proceedings, and also during the time he needs to return to the country from which he came, no witness or expert, whatever his nationality, who appears before the authority of the State making application, may be proceeded against or arrested in respect of previous offences or convictions, or as a participant or accomplice in the offences which gave rise to the proceedings in connection with which he was summoned as a witness or expert.

When a person who is summoned to appear is in custody, his temporary surrender may be requested, subject to the undertaking that he will be sent back as soon as possible. In every case the appearance of the person summoned shall be conditional upon his consent.

Article 21.

Summonses shall be served and letters rogatory shall be executed in accordance with the laws of the State applied to. The expenses arising in connection therewith shall be borne by the Government applied to, except in the case of expenses relating to expert examinations, which shall be borne by the State making application, if such examination involves more than one hearing.

Article 22.

The present Treaty shall apply to all territories under the sovereignty of the High Contracting Parties.

Article 23.

The High Contracting Parties shall settle by arbitration any disputes that may arise regarding the interpretation or execution of the present Treaty.

Article 24.

The present Treaty shall be ratified, and the instruments of ratification shall be exchanged at Rome as soon as possible. It shall enter into force one month after the exchange of ratifications, and its application shall extend to offences committed prior to its entry into force.

Either High Contracting Party may denounce it at any time ; in such case it shall cease to be in force six months after the day on which it was denounced.

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

Done at Caracas, in two originals, in Italian and Spanish, on the twenty-third day of August, one thousand nine hundred and thirty.

(L. S.) Pedro ITRIAGO CHACÍN.

(L. S.) Antonio CAVICCHIONI.
