

N° 3510.

POLOGNE ET ROUMANIE

Convention relative à l'extradition
des infracteurs et à l'entr'aide judi-
ciaire en matière pénale. Signée
à Bucarest, le 26 mars 1930.

POLAND AND ROUMANIA

Convention regarding Extradition of
Offenders and Reciprocal Judicial
Assistance in Criminal Matters.
Signed at Bucharest, March 26th,
1930.

¹ TRADUCTION. — TRANSLATION.

No. 3510. — CONVENTION² BETWEEN POLAND AND ROUMANIA REGARDING EXTRADITION OF OFFENDERS AND RECIPROCAL JUDICIAL ASSISTANCE IN CRIMINAL MATTERS. SIGNED AT BUCHAREST, MARCH 26TH, 1930.

French official text communicated by the Chargé d'Affaires p. i. of the Royal Roumanian Legation accredited to the League of Nations. The registration of this Convention took place September 25th, 1934.

HIS MAJESTY THE KING OF ROUMANIA
and

THE PRESIDENT OF THE REPUBLIC OF POLAND,
desirous of settling questions connected with extradition of offenders and of mutual reciprocal assistance in criminal matters, have resolved to conclude a Convention and have appointed for that purpose as their Plenipotentiaries :

HIS MAJESTY THE KING OF ROUMANIA :

His Excellency Monsieur Georges G. MIRONESCO, Minister, Secretary of State in the Department of Foreign Affairs ;

THE PRESIDENT OF THE REPUBLIC OF POLAND :

His Excellency Count Jean SZEMBEK, Polish Envoy Extraordinary and Minister Plenipotentiary at Bucharest ;

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

CHAPTER I.

EXTRADITION OF OFFENDERS.

Article I.

The High Contracting Parties undertake to surrender to one another on application persons who, being within the territory of one of them, are being proceeded against or have been convicted by the courts of the other State in respect of actions involving under the legislations of the two States — even if only under one of the legislations in force in part of their territories — a penalty entailing deprivation of liberty for a period of two years or any graver penalty.

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 Warsaw, July 25th, 1934.

Article 2.

The High Contracting Parties shall not extradite their own nationals and, furthermore, the Polish Republic shall not extradite nationals of the Free City of Danzig.

Should the person whose extradition is applied for have submitted a request for naturalisation to the authorities of the State applied to before the application for extradition has been received by the said State, the latter may postpone its decision on the application for extradition until such time as a decision has been reached with regard to the request for naturalisation.

Nevertheless, should the application for extradition be refused on the ground that the person applied for is or has become a national of the State applied to, the High Contracting Parties undertake to take proceedings against and try their respective nationals in accordance with their legislation in the same manner as if the act had been committed on their own territory.

Article 3.

Extradition shall not be granted :

(a) For political offences or acts connected with political offences.

Attempts on the life of the head of a State or a member of his family and, furthermore, in the case of Roumania, against the life of a member of the High Council of Regency, shall not be deemed to be a political offence or as an act connected with such an offence when the said attempt constitutes homicide (murder) or an attempt to commit or complicity in the same.

Further, the act of counterfeiting or debasing the coinage, or uttering counterfeited coin or fraudulently manufacturing, receiving or procuring instruments or other objects designed by their nature for the manufacture of counterfeited coin or debasing of coin, or attempts to commit such offences and complicity therein shall not be deemed to be a political offence.

The State applied to shall be the sole judge as to whether the offence which has been committed is a political offence or not.

(b) For offences of a purely military character ;

(c) For Press offences in the strict sense of the term ;

(d) For offences against the Customs laws, taxation laws or other financial legislation ;

(e) For offences in respect of which proceedings can be taken only on a complaint lodged by the injured party and may be dropped on the withdrawal of such complaint ;

(f) If, under the legislation of the State applied to, criminal proceedings are exclusively reserved for the judicial authorities of the said State ;

(g) If, under the laws in force throughout the territory of the State applied to, there is valid reason for dropping the criminal proceedings or annulling the judgment ;

(h) If, in respect of the same act, criminal proceedings against the individual applied for have been brought in the territory of the State applied to and have been terminated by a judgment or in any other manner, unless under the legislation of the said State it is possible for proceedings to be re-opened.

Nevertheless, the verdict of acquittal or decision dismissing the case, if based solely on the fact that the offence was committed abroad, shall not prevent extradition.

Article 4.

Extradition may be refused if criminal proceedings in respect of the same offence are pending in the territory of the State applied to against the person whose extradition is applied for.

Article 5.

In the case of offences which under the legislation of the applicant State involve the death penalty or general confiscation of property, the extradition of the person accused or convicted shall

be conditional on a formal assurance, given previously to the State applied to through diplomatic channel, that the said penalties will not be applied.

Article 6.

If the person applied for is being proceeded against or has been convicted in the territory of the State applied to for an offence other than that which is the occasion of the application, his extradition may be postponed until such time as the proceedings are concluded or, in the event of his conviction, until he has served his sentence. Such postponement shall not preclude an immediate decision with regard to extradition.

If, however, under the law of the applicant State the effect of the postponement of extradition mentioned in paragraph 1 might be to establish limitation or otherwise to cause serious impediments to the proceedings, the temporary surrender of the person applied for shall be allowed in the absence of any special grounds for its refusal and on condition that the person so surrendered shall be returned as soon as investigation the proceedings for which the said person was temporarily applied for have been terminated in the applicant State.

Article 7.

If the person whose extradition has been applied for by one of the High Contracting Parties is also claimed for the same offence by several other States, he shall be surrendered to the State on whose territory the offence was committed. Should the latter State not apply for extradition or should the offence in question have been committed on the territory of several States or should there be any doubts as to the place where it was committed, the person claimed shall be surrendered to the State of which he is a national. Should that State also not apply for extradition, the person claimed shall be surrendered to the State which was the first to apply for extradition.

Should the extradition of the same person be applied for by several States for different offences, the person shall be surrendered to the State of which he is a national. Should that State not apply for extradition, the person claimed shall be surrendered to the State which applies for extradition in respect of the offence which involves the severest penalty. Should all the offences involve equal penalties, extradition shall be granted to the State which was the first to make application.

The provisions of this Article shall not affect any undertakings which may have been entered into previously by either of the High Contracting Parties.

Article 8.

The person extradited may not be proceeded against or punished for an offence committed before his extradition and in respect of which extradition has not been granted, save in the following cases :

(1) Where the State which has granted extradition gives its special consent ; such consent may not be withheld if the conditions warranting the application for extradition are complied with in accordance with the provisions of the present Convention ;

(2) Where the person extradited intimates his consent ; such intimation to be put on record in an official document a certified copy of which must be forwarded to the State which has surrendered the accused. This clause shall not apply to offences in respect of which extradition is not allowed (Article 3) ;

(3) Where the person extradited has failed through his own fault to quit the territory of the State to which he has been surrendered within one month from the close of criminal proceedings or, if he has been convicted, within one month of the expiry or remission of his sentence, or where he returns to the country of his own accord.

Article 9.

Re-extradition of an extradited person to a third State may only be granted with the consent of the State which has surrendered him in the first instance or in the contingencies contemplated in Article 8, Nos. 1 to 3.

Article 10.

Applications for extradition shall be made through the diplomatic channel. The application must indicate the nationality of the person claimed.

Applications for extradition must be accompanied by a warrant of arrest issued by the competent judicial authority, by a copy of a sentence which has become executory or any other judicial document having the same force. The above-mentioned documents attached to the application for extradition must state the offence in respect of which the application is made, together with a brief statement of the offences charged and the text of the penal laws applicable to such acts. In the case of offences against property, the amount of the damage done or attempted to be done shall also be stated as far as possible.

It is desirable that either the application for extradition or some one of the documents attached thereto contain a description of the person claimed together with his photograph and any other information which may be useful for establishing his identity. The above-mentioned documents shall be produced in the original or in a certified true copy.

The application for extradition and its annexes shall be accompanied by a duly certified translation in the language of the State applied to, unless they are already made out in the said language.

Article 11.

Where extradition does not appear on the face of it to be unwarranted, the State applied to shall immediately take all necessary measures to secure the person of the accused and to prevent his escape. Should there be any doubts as to whether extradition can be granted, the applicant State may be asked for explanations.

If the latter does not furnish adequate explanations within four weeks from the date on which the note requesting the same was despatched, the preventive measures may be cancelled. The time-limit may be extended upon a request supported by reasons.

Article 12.

In urgent cases, persons against whom proceedings are pending may be placed under provisional arrest even before application for their extradition has been received, unless extradition appears on the face of it to be unwarranted, following on a communication containing an explicit reference to one of the acts specified in Article 10, paragraph 2, with particulars as to the nature of the offence charged.

Communications to the above effect may be transmitted direct by the courts, the public prosecutors or the police authorities of the applicant State to the competent authorities of the State applied to by post or telegraph.

A person found in the territory of one of the two States, who has been placed on the police black list at the request of the applicant State, shall be arrested provisionally even though no request has been made.

Article 13.

The date and place of provisional arrest in urgent cases shall be immediately communicated direct to the authority applying, to the authority which has ordered proceedings and to the Ministry of Justice of the State applied to.

A person arrested provisionally shall be set at liberty if within thirty days from the date of arrest the authority which arrested him has not received notification of one of the acts specified

in Article 10, paragraph 2. Nevertheless, upon a request supported by reasons, such arrest may be extended for fourteen days.

In the cases mentioned in the preceding paragraph, the documents may be transmitted direct.

A person placed under provisional arrest may be set at liberty if the Ministry of Foreign Affairs of the State applied to has not received the request for extradition within six weeks from the date of arrest.

Article 14.

A person arrested under the provisions of Articles 11, 12 and 13 may not be released on condition of bail or surety.

Article 15.

All articles derived from the offence or capable of serving as evidence against the person applied for which were in the possession of the latter at the time of his arrest or may have been discovered later shall be impounded and handed over to the State applying at the same time as the accused.

The articles mentioned in paragraph 1 shall be handed over even when extradition, although admissible, has not been possible owing to the death or escape of the person claimed.

The State to which application for the articles mentioned in paragraph 1 is made may retain them temporarily, should it have need of them for criminal proceedings.

In consenting to hand over the articles to which the present Article relates, the State applied to may make any reservation it may deem necessary with a view to safeguarding the rights of third parties.

Article 16.

Either State shall be liable, without right to repayment, for all expenses and charges occasioned within its territory by the procedure for the extradition of the accused or the handing over of the objects mentioned in Article 15, including the expenses incurred by the arrest, maintenance and transport of the person against whom proceedings are being taken and by the storage and transport of the articles mentioned above.

The State which surrenders the person extradited shall nevertheless communicate the amount of such expenditure to the applicant State, in order that the latter may claim them from the person liable for repaying them. The total sums collected shall revert to the State applied to.

Article 17.

When a third State surrenders an offender to one of the High Contracting Parties, the other High Contracting Party shall, on application, allow passage of the extradited person in transit through its territory.

The conditions laid down for extradition in Articles 1, 2, 3, 5 and 10 shall also apply to transit.

All expenditure arising out of passage in transit of the accused through the territory of the State applied to shall be repaid by the applicant State.

CHAPTER II.

JUDICIAL ASSISTANCE IN CRIMINAL MATTERS.

Article 18.

The High Contracting Parties undertake reciprocally to grant each other, on application, judicial assistance in criminal matters.

Article 19.

Judicial assistance shall include :

- (1) The service of a writ on any procedural document, including judgments ;
- (2) Hearing of accused, witnesses and experts, investigations on the spot, searches, seizure and despatch of all articles derived from the offence or capable of serving as evidence (material exhibits) and any other measures of investigation ;
- (3) Communication of documents and files, and despatch of the same ;
- (4) Communication of information from police records.

The execution of judgments in criminal matters shall not, however, take place.

Article 20.

Letters of request must clearly describe the document to be served and also contain the information necessary for ensuring their execution.

More particularly, requests for service must contain the address of the recipient and the nature of the act or document to be served.

Furthermore, letters of request should state the criminal case in respect of which assistance is necessary, indicate the names, occupation, domicile and nationality of all the accused, give a brief summary of the case and quote the relevant criminal laws.

Article 21.

Letters of request and their annexes, and all correspondence in connection with judicial assistance, must be accompanied by a duly certified translation in the language of the State applied to, unless the said documents are drawn up in that language.

A translation may be dispensed with in the case of communications between the judicial authorities in the districts of the Appeal Courts of Lwow on the one hand and of Cernăuți on the other.

Article 22.

Letters of request and the documents certifying their execution, as well as the documents constituting any other correspondence in matters of judicial assistance, shall be addressed by the judicial authorities and public prosecutors of the one State to the judicial authorities and public prosecutors of the other and forwarded through the diplomatic channel.

Nevertheless, the judicial authorities in the districts of the Appeal Courts of Lwow on the one hand and of Cernăuți on the other may communicate with each other direct.

Should the authority to which application is made not be competent, the letters of request shall be automatically forwarded to the competent authority of the same State, the authority making the application to be notified thereof.

Article 23.

The execution of letters of request may be refused :

- (1) If the matter in respect of which application is made is not within the competence of the judicial authorities of the State receiving the application ;
- (2) If the State to which application is made considers that its sovereignty or safety might be compromised by the execution of the letters of request ;
- (3) If the case concerns an act which, under the laws of the State applied to, is not punishable or constitutes a political or a purely military offence ;

(4) If the criminal proceedings in question, brought in the applicant State, concern a national of the State applied to who is not in the territory of the State making application ;

(5) If the person named is threatened with measures of compulsion or other penalties in case of non-appearance ;

(6) Communication of files and documents may also be refused in cases where particular difficulties arise in respect of the said communication. In such cases, refusal shall not, however, prevent communication of copies made at the expense of the applicant State.

Article 24.

When a search or the seizure and despatch of material exhibits is requested, effect shall only be given to letters of request in cases where the necessary conditions exist for extradition under the provisions of the present Convention.

Article 25.

Letters of request shall be executed in the form laid down in the legislation of the State applied to.

Nevertheless, a request from the applicant authority to the effect that a special method be followed shall be complied with, provided the method in question is not contrary to the legislation of the State applied to.

The authority responsible for executing the letters of request shall use the same means of compulsion as for the execution of letters of request received from the authorities of the State applied to.

The minutes and acts containing the result of the execution of letters of request shall be forwarded without translation to the applicant State.

Article 26.

If the request concerns the notification of an act, proof of service shall be given either by a receipt signed by the recipient, duly dated and legalised, or by a certificate of the State applied to certifying the fact, manner and date of service.

If the act to be served has been forwarded in duplicate, the receipt or the certificate must be given on one of the duplicate copies or attached thereto. This copy shall be returned to the authority making application.

Article 27.

Should the request for judicial assistance concern the seizure and despatch of the objects mentioned in Article 19, paragraph 2, the provisions of Article 15, paragraphs 3 and 4, shall apply.

Article 28.

If in a criminal case pending before the courts of one of the High Contracting Parties the personal appearance of a witness or an expert who is in the territory of the other Party is held to be necessary, the competent authorities of the latter shall forward the summons in question to him.

The expenditure involved in such appearance shall be borne by the applicant State, and the summons shall show the sum to be allowed to the witness or expert for travelling expenses and subsistence allowance, and the amount of the advance to be made to him by the State applied to, subject to repayment by the applicant State, as soon as the person receiving the summons has stated that he is willing to comply therewith.

No witness or expert, of whatever nationality, being in the territory of one of the High Contracting Parties and who, when called on by the said High Contracting Party, appears voluntarily in the courts of the other may be prosecuted in those courts or detained in custody or punished in that territory under any pretext for acts or sentences prior to his appearance.

Such persons shall, however, forfeit this privilege if, through their own fault, they do not quit the territory of the applicant State within seven days from the time when their presence in the courts of law ceased to be necessary.

Should a person summoned as a witness be under detention in the territory of the State applied to, he may be allowed to appear if the person applied for consents, and subject to an undertaking that he will be sent back as soon as possible. Such a request may not be refused except on special grounds.

Article 29.

Judicial assistance in criminal matters shall not involve the repayment of charges or expenses of any kind, with the exception of the allowances paid to witnesses or experts.

The amount of such charges and expenses shall be notified to the applicant State in order that it may claim them from the person responsible for repayment. The sums collected shall revert to the State applied to.

Article 30.

The High Contracting Parties agree reciprocally to communicate to each other, without repayment of costs, copies of police records or extracts from judgments giving sentences which have become executory with reference to nationals of the other Party. Furthermore, the High Contracting Parties will communicate to each other later decisions concerning the said judgments.

The provisions of the preceding paragraph shall not apply in cases where, under the laws in force in the territory of the district of the court which has given the judgment, the said judgment is not entered in the police records.

The reciprocal communications referred to in paragraph 1 shall be made through the diplomatic channel and in the language of the State making them.

Article 31.

The Ministries of Justice of the High Contracting Parties shall furnish, on request, information concerning the legislation in force in the territory of their State and, if necessary, concerning case law in respect of concrete questions.

Article 32.

If nationals of one of the High Contracting Parties, or the State itself, are civil parties (*parties civiles*) in a criminal case tried in the territory of the other Contracting Party, the latter undertakes to grant them all the rights given by its own laws to nationals of the country.

Article 33.

The present Convention shall be ratified and the instruments of ratification shall be exchanged at Warsaw as soon as possible.

It shall come into force two months after the date of the exchange of ratifications.

The present Convention may be denounced and, in such case, shall cease to take effect on the expiry of a period of six months from notification of denunciation by either of the High Contracting Parties.

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

Done in duplicate at Bucharest, this twenty-sixth day of March, one thousand nine hundred and thirty.

(L. S.) G. G. MIRONESCU.

(L. S.) J. ZSEMBEK.