

No. 47290

**Austria
and
United States of America**

Extradition Treaty between the Government of the Republic of Austria and the Government of the United States of America. Washington, 8 January 1998

Entry into force: *1 January 2000 by the exchange of instruments of ratification, in accordance with article 25*

Authentic texts: *English and German*

Registration with the Secretariat of the United Nations: *Austria, 23 March 2010*

**Autriche
et
États-Unis d'Amérique**

Traité d'extradition entre le Gouvernement de la République d'Autriche et le Gouvernement des États-Unis d'Amérique. Washington, 8 janvier 1998

Entrée en vigueur : *1^{er} janvier 2000 par échange des instruments de ratification, conformément à l'article 25*

Textes authentiques : *anglais et allemand*

Enregistrement auprès du Secrétariat des Nations Unies : *Autriche, 23 mars 2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Government of the Republic of Austria and the Government of the United States of America,

Recalling the Convention between the United States of America and Austria for the extradition of fugitives from justice, and exchange of notes concerning the death penalty, signed at Vienna, January 31, 1930, and the Supplementary Convention thereto signed at Vienna, May 19, 1934;

Noting that both the Republic of Austria and the United States of America currently apply the terms of that Treaty;

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 Parties agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with or found guilty of an extraditable offense.

Article 2

Extraditable Offenses

1. Extradition shall be granted for offenses which are subject under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty.

2. Extradition for the enforcement of a prison sentence or a preventive measure restricting liberty ordered by a criminal court for one or more of the offenses referred to in paragraph 1 shall be granted only if at least three months of the sentence or a preventive measure remain to be served.

3. If extradition has been granted pursuant to paragraph 1 or 2, it shall also be granted for any other offenses even if the time conditions established in those paragraphs do not apply, provided that all other requirements for extradition are met.

4. For the purposes of this article, extradition shall be granted:

- (a) Whether or not the laws in the Contracting States place the offense within the same category of offenses or describe the offense by the same terminology;
- (b) In criminal cases relating to taxes, customs duties, currency control, and import and export of commodities, whether or not the laws of the Contracting States provide for the same kinds of taxes, or customs duties or controls on currency or on the import or export of the same kinds of commodities; and
- (c) Whether or not the offense is one for which United States Federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States Federal court.

5. Subject to the conditions set out in paragraph 1, an offense shall also be an extraditable offense if it consists of an attempt or a conspiracy to commit, or participation in the commission of, an offense.

6. Extradition may be granted for an extraditable offense regardless of where the act or acts constituting the offense were committed.

Article 3

Nationality

1. Neither Party shall be bound to extradite its own nationals, but the executive authority of the Requested State shall have the power to extradite such persons if, in its discretion, it be deemed proper to do so and provided the law of the Requested State does not so preclude.

2. If extradition is refused solely on the basis of the nationality of the person 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) Murder;
- (b) Any 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; and
- (c) 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.

3. Extradition shall not be granted if the executive authority of the Requested State determines that the request was politically motivated.

4. The Requested State may refuse extradition for offenses under military law which are not offenses under ordinary criminal law.

Article 5

Jurisdiction of the Requested State

1. Extradition may be refused if the person sought is proceeded against in the Requested State for the offense for which extradition is requested.

2. Notwithstanding paragraph 1, extradition may be granted if the competent authorities of the Requested State have decided not to prosecute the person sought for the offense for which extradition is requested or decided to discontinue any criminal proceedings which have been initiated against the person for those acts.

Article 6

Non Bis in Idem

1. Extradition shall not be granted when the person sought has been convicted or discharged with final and binding effect by the competent authorities in the Requested State for the offense for which extradition is requested.

2. An acquittal or a discharge for lack of jurisdiction is not an obstacle to extradition.

Article 7

Lapse of Time

Extradition shall not be granted if the prosecution or the carrying out of the sentence has become barred by lapse of time under the laws of the Requesting State.

Article 8

Capital Punishment

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 may refuse extradition unless the Requesting State provides an assurance that the death penalty will not be imposed (in the case of a person sought for trial) or carried out (in the case of a person already sentenced to death at the time extradition is requested).

2. In instances in which a Requesting States provides an assurance in accordance with paragraph 1 of this article, the Requested State shall grant extradition, and the Requesting State shall fully comply with the assurance.

Article 9

Convictions in Absentia

If the person sought has been found guilty in absentia, the executive authority of the Requested State may refuse extradition unless the Requesting State provides it with such information or assurances as the Requested State considers sufficient to demonstrate that the person was afforded an adequate opportunity to present a defense or that there are adequate remedies or additional proceedings available to the person after surrender.

Article 10

Extradition Procedures and Required Documents

1. All requests for extradition shall be submitted through the diplomatic channel.
2. The requests for extradition shall be supported by:
 - (a) Documents, statements, or other types of information which describe the identity, the 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 prescribing the punishment for the offense;
 - (e) A statement of the provisions of law describing any time limit on the prosecution; and
 - (f) The documents, statements, or other types of information specified in paragraph 3 or 4 of this article, as applicable.
3. A request for extradition of a person who is sought for prosecution shall 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, if any; and
 - (c) Documents setting forth sufficient information to provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the warrant of arrest.
4. A request for extradition relating to a person who has been found guilty of the offense for which extradition is sought shall 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.
5. Documents transmitted through the diplomatic channel shall be admissible in extradition proceedings in the Requested State without further certification, authentication, or other legalization.

Article 11

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 for extradition, that State may request the necessary supplementary information and may fix a reasonable time-limit for the receipt thereof.
2. If the supplementary information furnished is not sufficient or is not received within the time specified, and if, as a consequence, the person sought is discharged, such discharge shall not preclude the Requesting State from making a new request for the extradition of the person sought.
3. Where the person sought is discharged from custody, the Requested State shall notify the Requesting State as soon as practicable.

Article 12

Translation

Unless otherwise agreed as appropriate in a specific case, all documents shall be translated by the Requesting State into the language of the Requested State. Translation need not be certified.

Article 13

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 Ministry of Justice of Austria and the United States Department of Justice. 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 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 and the applicable penalty;
- (e) A statement of the existence of a warrant of arrest or finding of guilt or a 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 extent to which its request has been complied with.

4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to the application of the Requesting State if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 10.

5. Termination of provisional arrest pending extradition pursuant to paragraph 4 is not an obstacle to rearrest and extradition if the extradition request is received later.

Article 14

Decision and Surrender

1. The Requested State shall promptly notify the Requesting State of its decision on the request for extradition. If the request is denied in whole or in part, the Requested State shall provide an explanation of the reasons for the denial.

2. If the request for extradition is granted, the authorities of the Contracting Parties shall decide on the time and place for the surrender of the person sought. The Requested State shall make known for what period the person sought was in custody pending extradition.

3. If the person sought is not removed from the territory of the Requested State within the time prescribed by the law of that state or, if the Requested State has no such law, within a reasonable period of time to be determined by the Requested State, that person may be discharged from custody. In such cases the Requested State may subsequently refuse extradition for the same offense.

4. If circumstances beyond its control prevent a Contracting Party from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting Party before the expiration of the time limit. In such a case, the competent authorities of the Contracting Parties may decide upon a new date for the surrender.

Article 15

Postponed and Temporary Surrender

1. If the extradition request is granted in the case of a person who is being proceeded against or is serving a sentence in the Requested State, the Requested State may postpone the surrender of the person sought. The postponement may continue until the prosecution of the person has been concluded and any sentence has been served.