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EXTRADITION



Treaty Series No. 49 (1994)

Second Additional Protocol

to the European Convention on Extradition, signed at Paris
on 13 December 1957

Strasbourg, 17 March 1978

[The United Kingdom instrument of ratification was deposited on 8 March 1994 and the Protocol, with the exception of Chapters I, III, IV and V entered into force for the United Kingdom on 6 June 1994]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 1994*

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**SECOND ADDITIONAL PROTOCOL
TO THE EUROPEAN CONVENTION ON EXTRADITION**

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1957¹ (hereinafter referred to as "the Convention") in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

CHAPTER I

ARTICLE 1

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

"This right shall also apply to offences which are subject only to pecuniary sanctions."

CHAPTER II

ARTICLE 2

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal offences"

1. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
2. 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."

CHAPTER III

ARTICLE 3

The Convention shall be supplemented by the following provisions:

"Judgments in absentia"

1. When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with a criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.
2. When the requested Party informs the person whose extradition has been requested of the judgment rendered against him in absentia, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State."

¹ Treaty Series No. 97 (1991), Cm 1762.

CHAPTER IV

ARTICLE 4

The Convention shall be supplemented by the following provisions:

"Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law."

CHAPTER V

ARTICLE 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

"This request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties."

CHAPTER VI

ARTICLE 6

1. This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of Europe.
2. The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval¹.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of deposit of its instrument of ratification, acceptance or approval.
4. A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

ARTICLE 7

1. Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

ARTICLE 8

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary-General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

¹ The Protocol entered into force on 5 June 1983.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary-General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary-General of the Council of Europe of the notification.

ARTICLE 9

1. Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:

- (a) not to accept Chapter I;
- (b) not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
- (c) not to accept Chapter III, or to accept only paragraph 1 of Article 3;
- (d) not to accept Chapter IV;
- (e) not to accept Chapter V.

3. Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary-General of the Council of Europe which shall become effective as from the date of its receipt.

4. A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

5. No other reservation may be made to the provisions of this Protocol.

ARTICLE 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

ARTICLE 11

1. Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary-General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

3. Denunciation of the Convention entails automatically denunciation of this Protocol.

ARTICLE 12

The Secretary-General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- (a) any signature of this Protocol;
- (b) any deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Protocol in accordance with Articles 6 and 7;
- (d) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;
- (e) any declaration received in pursuance of the provisions of paragraph 1 of Article 9;
- (f) any reservation made in pursuance of the provisions of paragraph 2 of Article 9;

- (g) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;
- (h) any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

SIGNATURES AND RATIFICATIONS

<i>State</i>	<i>Date of Signature</i>	<i>Date of deposit of Instrument of Ratification</i>
Austria	17 Mar 1978	2 May 1983*
Bulgaria	30 Sep 1993	*
Cyprus	21 Jun 1983	13 Apr 1984
Denmark	25 Oct 1982	7 Mar 1983
Germany	8 Nov 1985	8 Mar 1991
Greece	18 Jun 1980	
Hungary	19 Nov 1991	13 Jul 1993
Iceland	27 Sep 1982	20 Jun 1984
Italy	23 Apr 1980	23 Jan 1985
Netherlands	13 Jul 1979	12 Jan 1982*
Norway	11 Dec 1986	11 Dec 1986*
Poland	19 Feb 1993	15 Jun 1993
Portugal	27 Apr 1978	25 Jan 1990
Slovenia	31 Mar 1994	
Spain	10 Jun 1983	11 Mar 1985*
Sweden	6 Apr 1979	13 Jun 1979*
Switzerland	17 Nov 1981	11 Mar 1985*
Turkey	16 Jul 1987	10 Jul 1992*
United Kingdom	9 Nov 1992	8 Mar 1994*

ACCESSIONS

<i>State</i>	<i>Date</i>
Finland	30 Jan 1985*

*For reservations and declarations see pages 6-8.

RESERVATIONS AND DECLARATIONS

AUSTRIA

The instrument of ratification deposited by the Government of the Republic of Austria certains the following reservation:

According to Article 9, paragraph 2 of the Protocol, the Republic of Austria declares to accept Chapter II only in respect of offences in connection with taxes, duties and customs.

BULGARIA

On signing the Protocol the Government of the Republic of Bulgaria made the following declaration:

In accordance with Article 9 paragraph 2, the Republic of Bulgaria declares that it reserves the right not to accept Chapter I and the right to accept Chapter II in respect of offences concerning taxes, customs charges and currency exchange charges which are punishable under the Bulgarian Criminal Code.

FINLAND

The instrument of accession deposited by the Government of Finland contains the following reservations to the Convention:

Article 1

Finland reserves the right, when granting extradition, to stipulate that the extradited person shall not be prosecuted for the offence in question in a court which is only provisionally, or under exceptional circumstances, empowered to deal with such offences. Extradition requested for the execution of sentence rendered by such special court may be refused. Finland reserves also the right to refuse extradition, if extradition on account of the age, the state of health or any other condition affecting the individual in question or on account of special conditions would be unreasonable for human reasons.

Article 2, paragraph 1

The obligation to extradite mentioned in paragraph 1 of this Article shall be restricted to offences which, under Finnish law, are punishable by a penalty more severe than imprisonment for one year. A person sentenced in a foreign State for such offence may be extradited only if the term not yet served is deprivation of liberty for at least four months.

Article 3, paragraph 3

Finland reserves the right to regard the offence mentioned in paragraph 3 of this Article as a political offence, if such offence has been committed in open fight.

Article 4

Where a military offence also comprises an offence in respect of which extradition otherwise is permissible, Finland reserves the right to stipulate that the extradited person shall not be punished under a provision pertaining to military offences.

Article 18

If the person taken into custody, whose extradition has been granted, has not been taken over by the requesting State on the date appointed, Finland reserves the right to release him immediately.

NETHERLANDS

(Declaration contained in a letter from the Permanent Representation of the Netherlands to the Council of Europe, dated 20 February 1986, registered at the Secretariat General on 21 February 1986.)

"This Protocol shall apply as of 1 January 1986 equally to Aruba."

In a Note Verbale dated 21 July 1993, the Government of the Kingdom of the Netherlands made the following declarations:

The Permanent Mission of the Kingdom of the Netherlands declares that the Government of the Kingdom of the Netherlands, in accordance with Article 5, paragraph 2 of the Additional Protocol to the European Convention on Extradition and in accordance with Article 8, paragraph 2 of the Second Additional Protocol of 17 March 1978, is extending the application of both Protocols to the Netherlands Antilles and Aruba in relation with the Parties, for which the European Convention on Extradition also applies to the Netherlands Antilles and Aruba. The declaration as made by the Netherlands in respect of the Additional Protocol of 15 October 1975 shall also apply to the Netherlands Antilles and Aruba.

NORWAY

(Reservation contained in the instrument of ratification, deposited on 11 December 1986.)

"Pursuant to Article 9, Norway declares that it does not accept Chapters I and V of the Protocol."

SPAIN

(Reservations and Declarations contained in the instrument of ratification deposited on 7 May 1982.)

Translation

RESERVATIONS

To Article 1

The person claimed may not be brought to trial before a special court in the territory of the requesting State. Extradition shall not be granted for this purpose nor for the enforcement of a sentence or detention order imposed by courts of this nature.

To Article 10

Spain will not grant extradition if liability to criminal prosecution has lapsed for any cause for which provision is made in the legislation of the requesting Party or the requested Party.

To Article 21.5

Spain will grant transit only on the conditions specified for extradition in the present Convention.

To Article 23

Spain will require the requesting Party to supply a translation into Spanish, French or English of the request for extradition and the accompanying documents.

DECLARATIONS

Concerning Article 2.7

Spain will apply the rule of reciprocity in respect of offences excluded from the application of the present Convention by virtue of Article 2 thereof.

SWEDEN

(Letter from the Permanent Representative to the Council of Europe dated 11 June 1979 and deposited on 13 June 1979.)

Translation

... In the application of Article 12.1 of the Convention (Chapter V, Article 5 of the Protocol), the duties assigned to the Ministry of Justice shall be assumed by the Ministry of Foreign Affairs.

SWITZERLAND

(Reservation made at the time of signature of the Protocol—17 November 1981—and renewed at the time of deposit of the instrument of ratification thereof—11 March 1985)

Translation

Switzerland does not accept Chapter II of the Second Additional Protocol to the European Convention on Extradition.

TURKEY

(Declaration contained in a letter from the Permanent Representation of Turkey to the Council of Europe handed over at the time of signature of the Convention, on 16 July 1987—and renewed at the time of deposit of the instrument of ratification thereof—10 July 1992.)—Or. Engl.

"The Government of the Republic of Turkey reserves the right to use diplomatic channels in transmitting extradition requests in order to follow-up and carry out the necessary proceedings by diplomatic missions in the requested State, taking into consideration the type of request."

UNITED KINGDOM

(Reservation contained in a letter from the Permanent Representative handed to the Secretary General at the time of signature, on 9 November 1992—Or. Engl.)

In accordance with paragraph 2 of Article 9, the United Kingdom reserves the right not to accept Chapter I, Chapter III, Chapter IV or Chapter V of the Protocol.

(Reservation contained in the instrument of ratification, deposited on 8 March 1994— Or. Engl.)

In accordance with paragraph 2 of Article 9, the United Kingdom declares that it does not accept Chapter I, Chapter III, Chapter IV or Chapter V of the Protocol.

