

No. 5146. EUROPEAN CONVENTION ON EXTRADITION. DONE AT PARIS, ON 13 DECEMBER 1957¹

SIGNATURE and RATIFICATION

The Convention was signed and the instrument of ratification deposited with the Secretary-General of the Council of Europe on:

29 November 1965 and 20 December 1966, respectively

SWITZERLAND

(With effect from 20 March 1967.)

The signature and ratification were accompanied by the following reservations and declarations :

[TRANSLATION² — TRADUCTION³]

In respect of Article 1:

The Swiss Federal Council declares that extradition granted by Switzerland is in all cases subject to the condition that the person claimed is not brought before an extraordinary court (*tribunal d'exception*). It therefore reserves the right to refuse extradition :

- (a) if there is a possibility that the person claimed, if extradited, will be brought before an extraordinary court (*tribunal d'exception*) and if the requesting State does not give assurances deemed sufficient, that the judgment will be passed by a court which is generally empowered under the rules of judicial administration to pronounce on criminal matters;
- (b) if extradition is requested for the purpose of carrying out a sentence passed by an extraordinary court (*tribunal d'exception*).

In respect of Article 2, paragraph 1:

Having regard to the requirements of Swiss law on extradition, Switzerland reserves the right to refuse extradition if the offence alleged against the person claimed does not combine the constituent elements of one of the offences set out in the list deposited with the Secretariat of the Council of Europe as an annex to this declaration.

In respect of Article 2, paragraph 2.

The Swiss Federal Council declares that, notwithstanding the reservation made in respect of Article 2, paragraph 1, Switzerland may, when extradition is or has been granted for a crime (*crime*) or a correctional offence (*délit*) which is extraditable under Swiss law, extend the effects thereof to any other offence punishable under Swiss law.

In respect of Article 3, paragraph 3:

Notwithstanding Article 3, paragraph 3 of the Convention, Switzerland reserves the right to refuse extradition on the basis of Article 3, paragraph 1 when it is requested for the taking or attempted taking of the life of a Head of State or a member of his family.

¹ United Nations, *Treaty Series*, Vol. 359, p. 273; Vol. 404, p. 372, Vol. 444, p. 348; Vol. 475, p. 366, and Vol. 565, p. 294

² Translation provided by the Council of Europe

³ Traduction fournie par le Conseil de l'Europe

In respect of Article 6:

The Swiss Federal Council declares that Swiss law does not permit extradition of Swiss nationals. Provided that the statutory requirements are satisfied, the Swiss authorities may take proceedings and pass sentences in respect of offences committed outside Switzerland which are punishable under Swiss law as crimes (*crimes*) or correction offences (*délits*)

- if they were committed against Swiss nationals (Article 5 of the Swiss Penal Code);
- if they are extraditable under Swiss law and were committed by a Swiss national (Article 6 of the Swiss Penal Code; Section 16 of the Federal Act of 14th March 1958 on the responsibility of the Confederation, the members of its authorities and its officials);
- if they were committed on board a Swiss ship or a Swiss aircraft (Section 4 of the Federal Act of 23rd September 1953 on shipping under the Swiss flag; Section 97 of the Federal Act of 21st December 1948 on air navigation).

In respect of Articles 7 and 8:

The Swiss Federal Council declares that, under present Swiss legislation, extradition can be granted for an offence committed in Swiss territory or in a place treated as that territory only in application of Article 2, paragraph 2, that is, where the person claimed is in any event being extradited to the requesting State in respect of other offences not subject to Swiss jurisdiction and it is considered desirable, particularly in the interests of his social rehabilitation, that all the offences of which he is accused be dealt with at the same proceedings.

In respect of Article 9:

- (a) Switzerland reserves the right to refuse extradition, in derogation of Article 9, if the decisions motivating the refusal of extradition in accordance with that Article have been rendered in a third State in whose territory the offence was committed;
- (b) Switzerland reserves the right to grant extradition, notwithstanding the first sentence of Article 9, if it has granted extradition for other offences and the requesting State has shown that new facts or evidence which have come to its knowledge justify a review of the decision motivating the refusal for extradition in accordance with this Article, or if the person sought has not served all or part of the punishment imposed on him by that decision.

In respect of Article 11:

Switzerland reserves the right to apply Article 11, *mutatis mutandis*, also in cases where the law of the requesting State provides that the person claimed may, in respect of the offence for which extradition is requested, be sentenced to corporal punishment or be subjected to such treatment against his will.

In respect of Article 14, paragraph 1(b):

The Swiss Federal Council declares that the Swiss authorities regard discharge as final within the meaning of Article 14 if it enables the person extradited to move about freely without breaking the rules of behaviour and other conditions laid down by the proper authority. For the Swiss authorities, an extradited person is in all cases deemed

to be able to leave the territory of a State within the meaning of this article if he is not in fact prevented from leaving by a disease or some other actual restriction of his freedom of movement.

In respect of Article 16, paragraph 2:

Switzerland asks that any request addressed to it in accordance with Article 16, paragraph 2, contain a brief description of the offence alleged against the person claimed, including the essential particulars by which the nature of the offence can be appraised with reference to the law of extradition.

In respect of Article 21:

Switzerland reserves the right not to authorise transit in cases where the offence alleged against the person claimed comes within the provisions of Article 5 of the Convention or constitutes an infringement of commodity trade, restrictions or market regulations.

In respect of Article 23:

Switzerland asks that requests in connection with extradition addressed to its authorities and documents annexed thereto be accompanied by a translation into French, German or Italian if they are not written in one of these languages.

LIST OF EXTRADITABLE OFFENCES UNDER SWISS LAW

(Annex to the reservation on Article 2, paragraph 1
of the European Convention on Extradition)

Section 3 of the Federal Act of 22nd January 1892 on extradition to foreign States provides that persons who have committed, attempted to commit or been accomplices to any of the acts mentioned below, may be extradited, provided that the act in question is an offence under general criminal law and is punishable both under the law of the place of refuge and under the law of the requesting State.

I. *Offences¹ against persons*

1. Voluntary homicide with premeditation, voluntary culpable homicide without premeditation, involuntary homicide;
2. Infanticide and abortion;
3. Exposure or abandonment of children or defenceless persons;
4. Injuries which have resulted in death or lasting infirmity or inability to work for more than 20 days; participation in an affray which had consequences of this nature;
5. Ill-treatment of parents by their children; habitual ill-treatment of children by their parents or by the persons under whose authority they have been placed.

II. *Offences¹ against the freedom of persons and family rights*

6. Abduction of adults or children by force, menace or fraud;
7. Unlawful restraint of persons;

¹ The term "offences" here means both serious offences and correctional offences under criminal law.

8. Kidnapping of minors;
9. Violation of domicile with aggravating circumstances;
10. Threats to attack persons or property;
11. Falsification or destruction of documents showing a person's civil status.

III. *Offences¹ against morals*

12. Rape, indecent assault committed with use of force or on a defenceless person or on a person suffering from mental incapacity;
13. Indecent acts committed on children, or on anyone by a person in whose care he or she has been placed;
14. Corruption of minors by their parents, guardian or any other person entrusted with their supervision;
15. Professional procuring; traffic in women and children;
16. Acts of indecency causing a public scandal;
17. Incest;
18. Bigamy.

IV. *Offences¹ against property*

19. Brigandage (piracy), extortion, theft, receiving of stolen goods;
20. Fraudulent conversion (misappropriation) and breach of trust;
21. Wilful damage to property;
22. False pretences, fraudulent bankruptcy, and fraud in connection with bankruptcy or seizure.

V. *Offences¹ against public faith (foi publique)*

23. Counterfeiting or forging of coins or paper money or official stamps representing a value (postage stamps, etc.), banknotes, bonds, shares and other securities issued by the Government or by corporations, companies or individuals; introduction, issue or placing in circulation of such counterfeit or forged objects with fraudulent intent;
24. Counterfeiting or forging of seals, dies, stamps or plates; fraudulent use or misuse of counterfeit or genuine seals, stamps, dies or plates;
25. Forging or counterfeiting of documents; uttering of forged instruments (fraudulent use of counterfeit or forged documents), abstraction of documents, misuse of a paper signed in blank;
26. Moving of boundary-marks.

VI. *Offences¹ constituting a public danger*

27. Causing of fire, misuse of explosives, causing of flooding intentionally or through lack of care or imprudence;
28. Destroying or damaging, wilfully or through lack of care or imprudence, of railways, steam boats, postal installations, or electrical equipment and lines (telegraph, telephone) and endangering of their use;
29. Acts committed wilfully or through lack of care or imprudence liable to cause the destruction, grounding or loss of a ship;

¹ The term "offences" here means both serious offences and correctional offences under criminal law.

30. Spreading of contagious diseases, epidemics or epizootics, wilfully or through lack of care or imprudence; impairing of springs, wells or other water through harmful substances constituting a public danger;
31. Intentional imitation or adulteration of foodstuffs constituting a danger to human health or the health of animals; offering for sale or placing in circulation of such unhealthy or tainted foodstuffs, with concealment of their harmfulness;
- 31 *bis*. Wilful infringement of the regulations on narcotics, in so far as such infringement is punishable by imprisonment.

VII. *Offences¹ against the administration of justice*

32. False accusation;
33. Perjury or misrepresentation under a solemn promise;
34. False evidence, false report by an expert, false declaration by an interpreter; subornation of witnesses, experts or interpreters.

VIII. *Offences¹ relating to the exercise of official duties*

35. Bribery of public officials, jurors, arbitrators or experts;
36. Misappropriation and extortion by public officials; abuse of authority as a result of bribery or with fraudulent intent;
37. Destruction of letters or telegrams, violation of the secrecy of letters or telegrams by Post Office employees.

Section 154 of the Federal Act of 23rd September 1953 on shipping under the Swiss flag provides that offences punishable under the Act by imprisonment for one year or by a more severe sentence are extraditable within the meaning of Swiss legislation on extradition to foreign States. The offences in question are :

- intentional or negligent endangering of vessel (Section 128);
- intentional or negligent endangering of shipping (Section 129);
- putting to sea of an unseaworthy vessel (Section 131);
- failure to give assistance (Section 133 (1));
- abandonment of ship in peril (Section 134);
- failure to exercise command (Section 135 (1));
- abuse of authority and unauthorised assumption of authority (Section 136 (1));
- drunkenness (Section 139 (1));
- disobedience (Section 140 (3));
- unauthorised taking on board of persons and objects (Section 141 (1));
- endangering of shipowner or master through smuggling (Section 142 (1) and (3));
- misuse of flag (Section 143 (1));
- fraud in registration (Section 144 (1));
- unlawful removal of a vessel held by the authorities, infringement of a regulation of the authorities (Section 145);
- improper transfer (Section 146).

¹ The term "offences" here means both serious offences and correctional offences under criminal law