

**EXTRADITION TREATY  
BETWEEN MONTENEGRO AND THE  
REPUBLIC OF SERBIA**

**May 2009**

# **EXTRADITION TREATY BETWEEN MONTENEGRO AND THE REPUBLIC OF SERBIA**

Montenegro and the Republic of Serbia (hereinafter: Contracting States), desirous of further strengthening their cooperation in the field of legal assistance in criminal matters, and especially desiring to regulate cooperation regarding extradition of accused and convicted persons and thereby facilitate mutual legal transactions in this area, have agreed to conclude this Treaty.

## **Obligation to Extradite Article 1**

The Contracting States undertake to extradite to each other persons prosecuted for a criminal offence or requested for the enforcement of a legally-binding imprisonment sentence or security measure or corrective measure by the judicial authorities of the Requesting State, under the conditions stipulated in this Treaty and upon a petition.

## **Manner of Communication Article 2**

- (1) In applying this Treaty, the competent authorities of Contracting States shall communicate as follows:
- 1) for Montenegro - through the Ministry of Justice of Montenegro;
  - 2) for the Republic of Serbia - through the Ministry of Justice of the Republic of Serbia.
- (2) Diplomatic communication channel shall not be excluded thereby, if justified reasons therefore exist.
- (3) In emergency cases, letters rogatory and notifications, pursuant to this Treaty may be delivered through the International Criminal Police Organization (INTERPOL).

## **Language and Legalization Article 3**

- (1) Letters rogatory and documentation that should be delivered according to the provisions of this Treaty, shall be developed in the official language of the Requesting State.
- (2) Legalization of documents referred to in paragraph 1 of this Article shall not be needed.

## **Documentation**

### **Article 4**

Attached to the petition for extradition the Requesting State shall send:

1. means for determining the sameness of person whose extradition is requested (precise description, photographs, fingerprints, etc.),
2. certificate or other data about the nationality of the person whose extradition is requested,
3. indictment or the judgment or decision on detention or any other act equal to this decision, in original or certified copy, which should indicate the forename and family name of the person whose extradition is requested and other data necessary to determine his/her sameness, description of offence, the statutory title of the criminal offence and evidence of well-founded suspicion,
4. excerpt of the provisions of the penal code to be applied or which were applied to the person whose extradition is requested, because of the offence in relation to which extradition is requested,
5. data on the length of criminal sanction when it concerns extradition of person for serving the remainder of the criminal sanction.

### **Article 5**

If the data and documentation delivered by the Requesting State are insufficient for rendering a decision of the Requested State under this Treaty, the Requested State may seek additional notifications and documentation and to determine a deadline for their submission.

### **Article 6**

If the Requested State does not provide additional data and documentation within the deadline envisaged in the provision of Article 5 of this Treaty, the Requesting State shall immediately discontinue the extradition procedure and release the person whose extradition is requested.

## **Criminal Offences for which Extradition is Allowed**

### **Article 7**

- (1) Extradition in view of prosecution shall only be allowed for criminal offences which are punishable by an imprisonment sentence of at least one year or by a possible imposition of a security measure or corrective measure longer than one year, both under the law of the Requesting State and the Requested State.
- (2) Extradition in view of enforcement of a legally-binding imprisonment sentence or security measure or corrective measure shall be allowed for criminal offences that are punishable under the law of both Contracting States even if the duration of imprisonment sentence or security measure or corrective measure, or their remainder

that should be enforced, amounts to four months at least. Extradition shall also be granted when several sentences or security measures should be enforced, the sum of which amounts to four months at least.

### **Rejection of Extradition Article 8**

Extradition shall not be allowed for:

1. persons who are nationals of the Requested State on the day of decision-making on the petition for extradition;
2. persons who enjoy the right of asylum in the territory of the Requested State;
3. offences for which extradition is requested which were committed in the territory of the Requested State;
4. if the extradition is requested for an offence that constitutes under the opinion of the Requested State a political criminal offence or an offence connected with such a criminal offence;
5. if extradition is requested due to a criminal offence that consists solely of violation of military duties;
6. if the offence for which extradition is requested is not a criminal offence under the law of the Requested State and under the law of the state in which it has been committed;
7. if prosecution or the enforcement of criminal sanction is barred by the statute of limitations under the law of one of the Contracting States;
8. if the person whose extradition is requested was already sentenced by a legally-binding judgment for the same offence or if criminal proceedings against him/her were finally discontinued or charges against him/her were finally rejected;
9. if criminal proceedings were initiated in the Requested State against the person whose extradition is requested, for the same criminal offence.

### **Amnesty Article 9**

Extradition shall not be granted for a criminal offence that is covered by amnesty in the Requested State, if that country is competent to prosecute that criminal offence under its own criminal legislation.

### **Conviction in Absentia Article 10**

If a person whose extradition is required was sentenced in absentia, extradition shall be allowed only if the Requesting State provides guarantees that the criminal proceedings would be conducted again after extradition, in the presence of the extradited person.

### **Postponement of Extradition and Temporary Extradition**

## **Article 11**

- (1) If criminal proceedings are conducted against the person whose extradition is requested in the Requested State or if the person in question is convicted of another criminal offence in that state, and not of the one that is the subject of extradition, extradition may be postponed until that procedure is completed, and in the case of conviction - until the criminal sanction is enforced.
- (2) If prosecution could be barred by the statute of limitations due to postponement of extradition referred to in paragraph 1 this Article in the Requesting State, or if its course would be seriously interfered with, temporary extradition may be allowed upon a justified request of the Requesting State, in view of conducting criminal proceedings, under the condition that the extradited person be returned after the conduct of urgent procedural actions because of which temporary extradition was granted.
- (3) The Requesting State shall keep in custody the temporarily extradited person, during the stay in its territory. Time spent in custody, from the day when temporarily extradited person leaves the territory of the Requested State to the day when s/he returns to its territory, shall be credited against the criminal sanction which will be imposed or enforced in the Requested State.

### **Petitions for Extradition Made by Several States**

## **Article 12**

- (1) If several states require the extradition of the same person for the same or different criminal offences, the Requested State shall decide which country will be granted extradition, taking into account all the circumstances of the case, especially the relative gravity of committed criminal offences, the time of filing the request for extradition, the crime scene, the nationality of the person and the possibility to further extradite him/her to another country.
- (2) The Requested State shall inform the other requesting countries on the decision referred to in paragraph 1 of this Article, and may simultaneously provide its consent to the Requesting State to which extradition was granted, that the person may possibly further be extradited to some of the other countries, which have also requested his/her extradition.

### **Detention during Extradition Proceedings**

## **Article 13**

If the formal requirements for extradition are met, after receiving a petition for extradition the requested Contracting State may, in accordance with its legislation, order detention over the person, unless extradition is manifestly not allowed.

## **Article 14**

- (1) In urgent cases, upon an explicit request of the competent authority of the Requesting State, the competent authority of the Requested State may

temporarily detain the person even before the receipt of a petition for extradition. The request shall indicate the existence of one of the documents referred to in Article 4, item 3 of this Treaty and that there is an intention to submit a petition for extradition. The request should also contain the data about the criminal offence for which extradition will be requested, time and place of its enforcement, data on the prescribed or imposed sanction or on its remainder, and, if possible, a description of the person whose extradition will be requested.

- (2) The request referred to in paragraph 1 of this Article may be submitted either through diplomatic channels, or directly by mail or fax or through the International Criminal Police Organization - INTERPOL or via any other suitable means of written communication.
- (3) International wanted notices shall be considered requests for temporary detention.
- (4) The Requested State shall inform the Requesting State without delay on having detained a person in conformity with the provision of paragraph 1 of this Article.
- (5) Temporary custody shall be terminated if the petition for extradition and the documentation referred to in Article 4 of this Treaty are not be submitted to the Requested State within 18 days as of the date of detention. Upon a request with explanation of the Requesting State, detention may be extended, but in no case may it exceed 40 days from the date of the actual placing in custody.
- (6) Release shall not prevent repeated detention of the person, if the petition for extradition is delivered at a later time.

### **Decision on the Petition for Extradition** **Article 15**

- (1) The Requested State shall pass a decision as soon as possible on the petition for extradition and inform the Requesting State thereon.
- (2) Each totally or partially rejected petition for extradition shall be justified.

### **Simplified Extradition** **Article 16**

- (1) The Requested State may extradite a person whose extradition or temporary detention for extradition is requested, under a simplified procedure, if s/he explicitly states before the court of appropriate jurisdiction of the Requested State that s/he agrees with such extradition and if the preconditions for extradition are met.
- (2) The consent referred to in paragraph 1 of this Article shall be irrevocable.
- (3) In the case of simplified extradition it shall not be necessary to submit a petition for extradition with the documentation, however, if the Requested State considers it to be necessary, it may request certain data and documents from the Requesting State.
- (4) Extradition under a simplified procedure shall have the effect of extradition in the regular procedure.

**Repeated Petition for Extradition**  
**Article 17**

If the extradited person in any way avoids prosecution or enforcement of the sentence, and s/he is found in the territory of the Requested State, s/he may be extradited upon a repeated request. In this case, it shall not be necessary to attach to the request the documents referred to in Article 4 of this Treaty.

**Surrender of Persons whose Extradition is Granted**  
**Article 18**

- (1) If extradition is granted, the Requested State shall inform the Requesting State about the place and time of surrender and about the time the person sought spent in detention within the extradition proceedings.
- (2) Except as provided in paragraph 3 of this Article, the person whose extradition was granted may be released, if s/he is not taken over within 10 days from the date set for surrender.
- (3) If the surrender or taking over of the person whose extradition was granted is not possible due to exceptional circumstances, the interested country shall notify the other state thereon for the purpose of reaching an agreement on a new surrender time.

**Rule of Specialty**  
**Article 19**

- (1) The extradited person may not be prosecuted, subject to enforcement of the sentence or any other measure of restriction of liberty or extradited to a third country or for any criminal offence committed before the extradition, which is not subject to extradition.
- (2) The conditions referred to in paragraph 1 of this Article shall not apply if:
  - 1) the extradited person expressly waived the guarantee referred to in paragraph 1 this Article;
  - 2) the person extradited, although s/he had opportunities, did not leave the territory of the Contracting State to which s/he has been surrendered within 45 days after his/her final release, or if after having left that territory s/he returned to it again;
  - 3) if the state that has extradited the person provides its consent, in which case the petition shall be submitted with attachments listed in Article 4 of this Treaty and the court record with the statement of the extradited person.

**Crediting Detention against the Sanction**  
**Article 20**

If the extradited person in a Contracting State was detained for a criminal offence for which s/he was extradited, the time spent in custody shall be credited against his/her criminal sanction.

### **Surrender of Objects** **Article 21**

- (1) Objects, documents or files may be seized and surrendered to the other Contracting State in accordance with the law of the Requested State, if a request thereon exists and a decision of the competent authority of the Requesting State.
- (2) The requested Contracting State may postpone surrender of objects, documents or files, if it needs them in another criminal proceeding which is pending.
- (3) The Requesting State shall return the objects, documents or files to the requested Contracting State after the completion of the procedure for which they were requested, if the Requested State does not give up on them.

### **Article 22**

- (1) If the extradition of person is approved, the Requested State shall, even without a special petition, submit the following objects to the Requesting State:
  1. that can be used as evidentiary fact,
  2. which the person being extradited has acquired through the commission of a criminal offence or by converting into cash the objects originating from the criminal offence.
- (2) If the person whose extradition has been granted dies or flees, surrender of objects shall be approved nevertheless.
- (3) The rights of the Requested State or third parties to the objects referred to in paragraph 1 of this Article shall remain intact. If such rights exist, the Requesting State shall return to the Requested State the objects in question after the termination of proceedings, as soon as possible and free of charge. If the above-mentioned persons have permanent or temporary residence in the territory of the Requesting State, it may hand over the objects to them directly, provided that it obtains the consent of the Requested State.
- (4) Transfer of cash and delivery of objects shall be conducted in accordance with the legislation of the Requested State.

### **Application of Procedural Law and Notices** **Article 23**

- (1) Unless this Treaty provides otherwise, regulations of the Requested State shall apply on the procedure in connection with extradition and detention on the territory of the Requested State.
- (2) If a person is extradited for prosecution, the Requesting State shall inform the Requested State about the outcome of criminal proceedings and deliver the Requested

State the legally-binding decision.

### **Transit Article 24**

- (1) Unless this Treaty provides otherwise, transit of persons to be extradited by a third country to one of the Contracting States, through the territory of the other Contracting State, shall be granted under the same conditions as extradition.
- (2) A petition for transit through the territory of a Contracting State shall contain all the data referred to in Article 4 of this Treaty.
- (3) The Requested State may refuse a petition for transit through its territory if it concerns a person against whom criminal proceedings is conducted in that state or if a condemnatory judgment was imposed against him/her that was not enforced, or if the transit could harm the interests of that state.
- (4) Without the consent of the state which has approved the extradition of the person sought, the Contracting State through whose territory his/her transit is conducted shall not prosecute that person or enforce a criminal sanction against him/her for acts that were committed before the transit.
- (5) In the course of the transit, the Requested State shall keep in custody the person under transit.

### **Article 25**

- (1) Where during the enforcement of extradition a person needs to be transferred from a third country into a Contracting State by air, without landing on the territory of the other Contracting State, an explicit approval by the Contracting State through whose territory the flight is conducted shall not be necessary. The Requesting State shall inform in advance that country of the existence of one of the documents referred to in Article 4, item 3 of this Treaty, and that the person being transferred is not a national of a Contracting State through whose territory the flight is conducted and that s/he is not prosecuted for a military or political criminal offence.
- (2) In the event of unforeseen landing in the territory of the state through whose territory the flight is done, the notification referred to in paragraph 1 of this Article shall have the same effects as the petition for detention provided for in Article 14 of this Treaty.

### **Expenses Article 26**

- (1) The expenses of extradition shall be borne by the Contracting State on whose territory they were incurred.
- (2) The Requesting State shall bear the expenses of transit.
- (3) The expenses of transport by plane shall be borne by the State which has proposed such transport.

## **Final Provisions**

### **Article 27**

This Treaty shall not infringe upon the obligations of Contracting States arising from multilateral Treaties.

### **Article 28**

The Contracting States shall resolve disputed questions regarding the enforcement of this Treaty through diplomatic channels.

### **Article 29**

- (1) This Treaty shall be subject to ratification.
- (2) The Treaty shall enter into force on the day of receipt of the last note by which the Contracting States mutually inform each other about the ratification procedure conducted in accordance with their legislation.
- (3) The Treaty shall be concluded for an indefinite period of time. Either Contracting State may denounce this Treaty by giving written notice to the other Contracting State through the diplomatic channel. The denouncement shall be effective six months after the date of the receipt of such notice.
- (4) The Treaty shall be provisionally applied from the date of signing. Provisional application of the Treaty shall cease on the day of entry into force of this Treaty or 30 days after receipt of the notice of one of the Contracting States informing the other Contracting State of its intention not to become a member to this Treaty.

DONE in Podgorica this twenty-ninth day of May, 2009, in duplicate, each in the Montenegrin and Serbian languages, both texts being equally authentic.

**FOR MONTENEGRO**  
**MINISTER OF JUSTICE**

*Miraš Radović, manu propria*

**FOR THE REPUBLIC OF SERBIA**  
**MINISTER OF JUSTICE**

*Snežana Malović, manu propria*