

SCHEDULE 4

RESERVATIONS AND DECLARATIONS MADE BY CONVENTION STATES

PART 3

AUSTRIA

Declarations

Article 2

Austria will grant extradition also under the conditions mentioned in Article 2, paragraph 2.

Articles 6 and 21

The Government of Austria declares that Romania's declaration concerning Article 6, paragraph 1(a) and (b) and Article 21, paragraph 5, of the Convention is interpreted by Austria in the way that persons who have been granted asylum in Romania will be placed on an equal footing with Romanian nationals only in the event of a request for extradition or transit through Romania's territory by the persecuting State and that, in that case, such persons will neither be extradited nor transited through Romania.

The declaration by Romania concerning Article 6, paragraph 1(a) and (b) and Article 21, paragraph 5, is compatible with the aim and purpose of the Convention only if the extradition or transit through Romania's territory to a third State of persons granted asylum in Romania is not refused solely on the grounds that those persons are treated as Romanian nationals.

Concerning the declarations and reservations formulated by Poland with regard to the European Convention on Extradition, the Austrian Government shares the interpretation contained in the declaration of the Government of the Federal Republic of Germany, dated 11 October 1993.

The Government of Austria declares that Poland's declaration concerning Article 6, paragraph 1(b) of the European Convention on Extradition is interpreted by Austria in the same way, as meaning that persons who have been granted asylum in Poland will be placed on an equal footing with Polish nationals only in the event of a request for extradition by the persecuting State and that, in that case, such persons will not be extradited.

The declaration by Poland concerning Article 6, paragraph 1(b) is compatible with the aim and purpose of the Convention only if the extradition to a third state of persons granted asylum in Poland is not refused solely on the grounds that those persons are treated as Polish nationals.

In any case Austria will refuse transit of Austrian nationals.

Transit for offences punishable, under the law of the requesting Party, by death or by a sentence incompatible with the requirements of humanity and human dignity, will be granted under the conditions governing the extradition for such offences.

Austria will regard the time of surrender of the person claimed as decisive for the determination of nationality.

Article 7

Austria will only grant extradition of a person for an offence which, according to Austrian law, is under Austrian jurisdiction, insofar as that person will be extradited for another offence and as the condemnation of that person by the judicial authorities of the requesting State for all offences is in

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the interest of ascertaining the truth or useful by reason of fixing of the penalty and execution of the sentence.

Article 9

Austria will grant extradition if the person claimed was acquitted only for lack of Austrian jurisdiction, or if, only for this reason, criminal proceedings against this person have not been instituted or if instituted criminal proceedings were terminated.

Article 11

With reference to circular No. JJ2356C Tr./24–4 of 16 February 1990 concerning the declarations and reservations made by Portugal [*Note from the Secretariat: letter from the Permanent Representative of Portugal dated 12 February 1991*] in respect of the European Convention on Extradition and with reference to the declaration by the Government of the Federal Republic of Germany dated 4 February 1991, the Austrian Government shares the German interpretation of the matter.

Article 11 of the European Convention on Extradition provides for the possibility of refusing extradition in cases in which the offence for which extradition is requested is punishable by death under the law of the requesting Party. However, the Convention does not contain a similar provision for sentences of life imprisonment.

The application of the European Convention on Extradition in respect of Portugal without the interpretation proposed by the German Government would result in a situation where extradition for a crime punishable by life imprisonment would have to be refused.

This is not compatible with the meaning and purpose of the Convention. The result of such an application would be the regular refusal of extradition for serious crimes and the authorisation of extradition for relatively minor crimes. This would be contrary to the purpose of the Convention, namely to achieve co-operation between the Contracting Parties to take international action against crime.

Article 16

In a case of a request for provisional arrest, Austria also requires a short statement of the facts the person claimed is charged with.

Reservations

Article 1

Austria will not grant extradition if the person claimed is to be brought before a special court or if the extradition should lead to the execution of a sentence or a detention order inflicted by such a court.

Article 5

Austria will further grant extradition for offences which are exclusively contravention against regulations concerning monopolies or the export, import, transit and rationing of goods only under the conditions mentioned in Article 5.

Article 11

Austria will refuse extradition requested in order to carry out death-penalty. Extradition for an offence punishable by death under the law of the requesting Party will only be granted if the requesting State accepts the condition that a death-penalty will not be pronounced. Austria will

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apply the same principles in the case of sentences which are incompatible with the requirements of humanity and human dignity.