

Japan-Korea Extradition Treaty

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND JAPAN

Signed at Seoul April 8, 2002

Entered into force June 21, 2002

The Republic of Korea and Japan (hereinafter referred to as "the Parties"),

Desiring to make more effective the co-operation of the two countries in the repression of crime by concluding a treaty on extradition,

Have agreed as follows:

ARTICLE I Obligation to Extradite

Each Party agrees to extradite to the other Party, in accordance with the provisions of this Treaty, any person found in its territory and sought by the other Party for prosecution, trial, or execution of punishment for an extraditable offense.

ARTICLE II Extraditable Offenses

1. For the purpose of this Treaty, extraditable offenses are offenses which are punishable under the laws of both Parties by death, by life imprisonment, or by deprivation of liberty for a maximum period of at least one year.
2. In the case in which the person sought has been sentenced by a court of the Requesting Party for any extraditable offense, extradition shall be granted only if the person sought has been sentenced to death or if the sentence remaining to be served is at least four months.
3. For the purpose of this Article, in determining whether an offense is an offense against the laws of both Parties:
 - (a) it shall not matter whether the laws of the Parties place the conduct constituting the offense within the same category of offenses or denominate the offense by the same terminology; and
 - (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offense differ.
4. Notwithstanding the provisions of paragraph 3, where extradition of a person is sought for an offense against a law relating to taxation, customs duties or other revenue matter, or foreign exchange control, the offense shall be regarded as an offense against the laws of both Parties if the laws of the Requested Party have corresponding offenses with respect to the same category of taxation, customs duties or other revenue matter, or foreign exchange control.

5. If the request for extradition relates to a number of offenses, each of which is punishable under the laws of both Parties, but some of which do not meet the other requirements of paragraphs 1 and 2, the Requested Party may also grant extradition for such offenses provided that the person is to be extradited for at least one extraditable offense.

Article III Mandatory Refusal of Extradition

Extradition shall not be granted under this Treaty in any of the following circumstances:

- (a) When there is no reasonable ground to suspect, according to the laws of the Requested Party, that the person sought has committed the offense for which extradition is requested, in case where the person has not been convicted in the Requesting Party.
- (b) When the person sought has been convicted in absentia in the Requesting Party for the offense for which extradition is requested, where the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defense and he or she has not had or will not have the opportunity to have the case retried in his or her presence.
- (c) When the Requested Party determines that the offense for which extradition is requested is a political offense or that the request for extradition is made with a view to prosecuting, trying or punishing the person sought for a political offense.

The following offenses themselves shall not be interpreted as political offenses:

- (i) a murder, other willful violent crime or attempt to commit such offenses, where punishable, against the person of a Head of State or a Head of Government of one of the Parties, or of a member of his or her family committed with the knowledge that the person concerned is such person;
- (ii) an offense which the Parties have the obligation to include as extraditable offenses by reason of a multilateral international agreement to which they are both parties.
- (d) When the person sought has been prosecuted or has been tried and convicted or acquitted by the Requested Party for the offense for which his or her extradition is requested.
- (e) When it is deemed that the imposition or the execution of punishment upon the person sought would be barred by reasons prescribed under the laws of the Requested Party, including lapse of time, except for the reason of not having jurisdiction over the offense.
- (f) When the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to prosecuting or punishing the person sought, by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that that person's position may be prejudiced for any of those reasons.

Article IV Discretionary Refusal of Extradition

Extradition may be refused under this Treaty in any of the following circumstances:

- (a) When the offense for which extradition is requested is regarded under the laws of the Requested Party as having been committed in whole or in part within its territory or any vessel or any aircraft of that Party.
- (b) When the person sought has been acquitted or convicted in a third State for the same offense for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable.
- (c) When the Requested Party deems that, because of age, health or other personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations.

- (d) When the Requested Party has decided either not to institute or to terminate prosecution against the person for the offense in respect of which extradition is requested.

Article V Deferred Procedures

When the person sought has been prosecuted or has not undergone the execution of punishment in the Requested Party for an offense other than that for which extradition is requested, the Requested Party may defer his or her surrender until the trial is concluded and any punishment that person may be or may have been imposed is fully executed or no longer enforceable.

Article VI Extradition of Nationals

1. The Requested Party shall not be bound to extradite its own nationals under this Treaty, but it shall have the power to extradite them in its discretion.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, to the extent permitted under its laws, submit the case to its authorities for prosecution at the request of the Requesting Party.

Article VII Extra-territorial Offense

Where the offense for which extradition is requested has been committed outside the territory of the Requesting Party, and has not been committed in any vessel or any aircraft of the Requesting Party, extradition shall be granted if the laws of the Requested Party provide for the punishment of such an offense committed outside its territory or if the offense has been committed by a national of the Requesting Party. Where the laws of the Requested Party does not so provide, and the offense has been committed by a person other than a national of the Requesting Party, the Requested Party may, in its discretion, grant extradition, provided that the requirements of this Treaty are met.

Article VIII Rule of Specialty

1. A person who has been extradited under this Treaty shall not be detained, prosecuted, tried or punished for any offense committed before extradition other than that for which extradition has been granted, nor extradited to a third State for any offense, except in any of the following circumstances:
 - (a) When that person has left the territory of the Requesting Party after extradition and has voluntarily returned to it.
 - (b) When that person has not left the territory of the Requesting Party within forty-five (45) days after being free to do so.
 - (c) When the Requested Party has consented to his or her detention, prosecution, trial or punishment for an offense other than that for which extradition has been granted or to his or her extradition to a third State.

For the purpose of this subparagraph, the Requested Party may require the submission of such documents as mentioned in Article IX and a legal record of statements, if any, made by the extradited person in respect of the offense concerned.

2. The Requesting Party may detain, prosecute, try or punish the person surrendered under this Treaty for any extraditable offense, in so far as such measures are instituted upon the basic facts which constitute the offense for which extradition has been granted.

Article IX Extradition Procedures and Required Documents

1. The request for extradition shall be made in writing through the diplomatic channel.
2. The request for extradition shall be accompanied by:
 - (a) documents which describe the identity and the probable location of the person sought;
 - (b) a statement of the facts of the case;
 - (c) the texts of the laws describing the essential elements and the designation of the offense;
 - (d) the texts of the laws describing the punishment for the offense; and
 - (e) the texts of the laws describing the time limit on the prosecution or the execution of punishment for the offense.
3. When the request for extradition relates to a person who has not yet been convicted, it shall be accompanied by:
 - (a) a copy of the warrant of arrest issued by a judge or other judicial officer of the Requesting Party;
 - (b) information establishing that the person sought is the person to whom the warrant of arrest refers; and
 - (c) such information as would provide reasonable ground to suspect, according to the laws of the Requested Party, that the person sought has committed the offense for which extradition is requested.
4. When the request for extradition relates to a convicted person, it shall be accompanied by:
 - (a) a copy of the judgement of conviction imposed by a court of the Requesting Party;
 - (b) information establishing that the person sought is the person to whom the conviction refers; and
 - (c) a statement showing to what extent the sentence imposed has not been carried out.
5. All the documents in support of the request that are required to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be authenticated and accompanied by a translation in the language of the Requested Party.
6.
 - (a) If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.
 - (b) If the person sought is arrested, and the additional information is not received in the time specified or information furnished becomes insufficient in accordance with this Treaty, the person may be released from custody.
 - (c) Where the person is released from custody in accordance with subparagraph (b), the Requested Party shall notify the Requesting Party as soon as practicable.

Article X Provisional Arrest

1. In case of urgency, a Party may request the provisional arrest of the person to be sought, through the diplomatic channel, by notifying that a warrant of arrest has been issued or a sentence has been imposed for the offense for which extradition is to be requested and assuring that a request for extradition will be made.
2. The application for provisional arrest shall be in writing and contain:
 - (a) a description of the person to be sought;
 - (b) the probable location of the person to be sought;
 - (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;
 - (e) a statement of the existence of a warrant of arrest or a judgment of conviction against the person to be sought; and
 - (f) a statement assuring that a request for extradition for the person to be sought will follow.
3. The Requested Party shall decide on such request in accordance with its laws and shall promptly notify the result of its decision to the Requesting Party.
4. If the Requesting Party fails to present the request for extradition within forty-five (45) days from the date of provisional arrest, the person arrested shall be set at liberty, provided that this stipulation shall not prevent the Requested Party from instituting a proceeding with a view to extraditing the person sought if a request for extradition is subsequently received.

ARTICLE XI Concurrent Request

1. The Requested Party, upon receiving requests from the other Party and from a third State or States for the extradition of the same person either for the same offense or for different offenses, shall determine to which of the requesting States it will extradite that person.
2. In determining to which State a person is to be extradited, the Requested Party shall have regard to all the relevant circumstances, including:
 - (a) the time and place of commission of each offense;
 - (b) the gravity of the offenses;
 - (c) the respective dates of the requests;
 - (d) the nationality and the ordinary place of the residence of the person sought; and
 - (e) whether the requests were made pursuant to treaty.

ARTICLE XII Decision and Surrender

1. The Requested Party shall promptly communicate to the Requesting Party through the diplomatic channel its decision on the request for extradition. By specifying the applicable articles under this Treaty, reasons shall be given for any complete or partial refusal of a request for extradition.
2. The Requested Party shall surrender the person sought to the appropriate authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both Parties.

3. If an order to surrender has been issued by the competent authority of the Requested Party and the Requesting Party fails to receive the person sought within such time as may be stipulated by the laws of the Requested Party, it may set him or her at liberty and may subsequently refuse to extradite that person for the same offense. The Requesting Party shall promptly remove the person received from the territory of the Requested Party.

ARTICLE XIII Surrender of Article

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all articles that have been acquired as a result of the offense or which may be required as evidence shall, if the Requesting Party so requests, be surrendered if extradition is carried out, or if the extradition cannot be carried out owing to escape of the person sought.

2. Any article so surrendered shall, upon the request of the Requested Party, be returned to that Party at the expense of the Requesting Party after the completion of the proceedings.

ARTICLE XIV Expenses

1. The Requested Party shall make all necessary arrangements for any internal proceedings arising out of a request for extradition and shall bear all the expenses incurred therefrom.

2. The Requested Party shall bear, *inter alia*, the expenses incurred in its territory in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until surrender to a person nominated by the Requesting Party.

3. The Requesting Party shall bear the expense incurred in conveying the person extradited from the territory of the Requested Party.

ARTICLE XV Transit

1. Each Party shall grant to the other Party the right to transport through its territory a person surrendered to the other Party by a third State on request made through the diplomatic channel except in any of the following circumstances:

- (a) When the criminal act which has given rise to the extradition would not constitute an offense under the laws of the Party through which transit is requested.
- (b) When the criminal act which has given rise to the extradition is a political offense or when it appears that the request for extradition is made with a view to prosecuting, trying or punishing the person surrendered for a political offense. If any question arises as to the application of this provision, the decision of the Party through which transit is requested shall prevail.
- (c) When public order would be prejudiced by the transit.

2. In the case above, the Party to which extradition has been granted shall reimburse the Party through whose territory transportation has been made for any expenses incurred by the latter in connection with such transportation.

ARTICLE XVI Consultation

1. The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.

2. The Ministry of Justice of the Republic of Korea and the competent authorities of Japan may consult with each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.

ARTICLE XVII
Final Provisions

1. The headings of the Articles of this Treaty are inserted for convenience of reference only and shall not affect the interpretation of this Treaty.

2. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at Tokyo as soon as possible. It shall enter into force on the fifteenth day after the date of the exchange of the instruments of ratification.

3. This Treaty shall apply to requests for extradition made on and after the date it enters into force, even if the offense was committed prior to that date.

4. Either Party may terminate this Treaty at any time by giving written notice to the other Party, and the termination shall be effective six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE in duplicate, at Seoul, this 8th day of April, 2002, in the Korean, Japanese and English languages, all texts being equally authentic. In case of divergence of interpretations, the English text shall prevail.

FOR THE REPUBLIC OF KOREA

FOR JAPAN