



793



Statutory Rules 1991 No. 94¹

Extradition (Hellenic Republic) Regulations

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Extradition Act 1988*.

Dated 16 May 1991.

W. B. CAMPBELL
Administrator

By His Excellency's Command,

MICHAEL DUFFY
Attorney-General

Citation

1. These Regulations may be cited as the Extradition (Hellenic Republic) Regulations.

Commencement

2. These Regulations commence on 5 July 1991.

Interpretation

3. In these Regulations, unless the contrary intention appears: "the Act" means the *Extradition Act 1988*.

Declaration of Hellenic Republic as extradition country

4. The Hellenic Republic is declared to be an extradition country.

Application of Act

5. The Act applies in relation to the Hellenic Republic subject to the Treaty on Extradition between Australia and the Hellenic Republic done at Athens on 13 April 1987 (being the treaty a copy of the English text of which is set out in the Schedule).

SCHEDULE

Regulation 5

**TREATY ON EXTRADITION BETWEEN
AUSTRALIA AND THE HELLENIC REPUBLIC**

Australia and the Hellenic Republic,

DESIRING to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty for the extradition of persons wanted for prosecution or the imposition or enforcement of a sentence,

HAVE AGREED as follows:

ARTICLE 1**OBLIGATION TO EXTRADITE**

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the requesting State for an extraditable offence.

ARTICLE 2**EXTRADITABLE OFFENCES**

1. For the purposes of this Treaty, extraditable offences are offences, however described, punishable under the laws of both Contracting States by deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least four months of such penalty remains to be served.
2. For the purpose of this Article in determining whether an offence is an offence against the laws of both Contracting States:
 - (a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (b) the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.
3. Where extradition of a person is requested for an offence against a law relating to taxation, customs duties, foreign exchange controls or other revenue matter, extradition may not be refused on the ground that the laws of the requested State do not impose the same kind of tax or duty or do not contain a tax, duty, customs

SCHEDULE—continued

regulation, or exchange controls of the same kind as the laws of the requesting State.

4. Where the offence has been committed outside the territory of the requesting State, extradition shall be granted where the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the requested State does not so provide the requested State may, in its discretion, grant extradition.

ARTICLE 3

EXCEPTIONS TO EXTRADITION

1. Extradition shall not be granted in any of the following circumstances:
 - (a) when the offence for which extradition is requested is a political offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his or her family nor an offence against the law relating to genocide;
 - (b) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons;
 - (c) when the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law of the Contracting States;
 - (d) when final judgement has been passed in the requested State or in a third state in respect of the offence for which the person's extradition is requested; or
 - (e) when the person whose extradition is requested has, according to the law of either Contracting State, become immune from prosecution or punishment by reason of lapse of time, or for any other reason.
2. Extradition may be refused in any of the following circumstances:
 - (a) when the person whose extradition is requested is a national of the requested State. Where the requested State refuses to extradite a national of that State it shall, if the other State so requests and the law of the requested State allows, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken if that is considered appropriate;
 - (b) when the competent authorities of the requested State have decided to refrain from prosecuting the person whose extradition is requested for the offence in respect of which extradition is requested;
 - (c) when the offence with which the person sought is charged or of which he is convicted, or any other offence for which he may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the requesting State unless that State undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
 - (d) when the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State;
 - (e) when a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested; or
 - (f) when the competent authority of the requested State, while also taking into account the nature of the offence and the interests of the requesting State,

SCHEDULE—continued

considers that, in the circumstances of the case, including the age, health or other personal circumstances of the person whose extradition is requested, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment.

3. This article shall not affect any obligations which have been or shall in the future be assumed by the Contracting States under any multilateral convention.

ARTICLE 4**POSTPONEMENT OF CONSIDERATION OF EXTRADITION REQUEST**

1. The requested State may postpone consideration of a request for the extradition of a person in order to proceed against him, or so that he may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is requested and where the requested State so postpones the extradition it shall advise the requesting State accordingly.

ARTICLE 5**EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS**

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.

2. The request for extradition shall be accompanied:

- (a) if the person is accused of an offence—by a warrant for the arrest or a copy of the warrant for the arrest of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence;
- (b) if a person has been convicted in his absence of an offence—by a judicial or other document, or a copy thereof, authorising the apprehension of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence;
- (c) if the person has been convicted of an offence otherwise than in his absence—by such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
- (d) if the person has been convicted of an offence otherwise than in his absence but no sentence has been imposed—by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;
- (e) in all cases by a copy of the relevant provision of the statute, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, as the case may be, and in either case, a statement of the punishment that can be imposed for the offence; and
- (f) in all cases by as accurate a description as possible of the person together with any other information which may help to establish his identity and nationality.

3. To the extent permitted by the law of the requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with provided that the person consents to an order for extradition being made.

SCHEDULE—continued

4. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State.

ARTICLE 6

AUTHENTICATION OF SUPPORTING DOCUMENTS

1. A document that, in accordance with Article 5, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the requested State.

2. A document is authenticated for the purposes of this Treaty if:

- (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the requesting State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal of the requesting State or of a Minister of State, or of a Department or officer of the Government, of the requesting State.

ARTICLE 7

ADDITIONAL INFORMATION

1. If the requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of its law with respect to extradition, that State may request that the necessary additional information be furnished within such time as it specifies.

2. If the person whose extradition is requested is under arrest and the additional information furnished is not sufficient or is not received within the time specified, the person may be released from custody but such release shall not preclude the requesting State from making a fresh request for the extradition of the person.

3. Where the person is released from custody in accordance with paragraph 2, the requested State shall notify the requesting State as soon as practicable.

ARTICLE 8

PROVISIONAL ARREST

1. In case of urgency a Contracting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence and terms of a warrant of arrest or a judgement of conviction against the person, a statement of the punishment that can be imposed or has been imposed for the offence and, if requested by the requested State, a statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such an application the requested State shall take the necessary steps to secure the arrest of the person and the requesting State shall be promptly notified of the result of its request.

4. A person arrested upon such an application may be set at liberty upon the expiration of forty five days from the date of arrest if a request for extradition, supported by the documents specified in Article 5, has not been received by the requested State.

SCHEDULE—continued

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

ARTICLE 9**CONFLICTING REQUESTS**

1. Where requests are received from two or more States for the extradition of the same person, the requested State shall determine to which of those States the person is to be extradited and shall notify the requesting States of its decision.
2. In determining to which State a person is to be extradited, the requested State shall have regard to all relevant circumstances and, in particular, to:
 - (a) if the requests relate to different offences—the relative seriousness of the offences;
 - (b) the time and place of commission of each offence;
 - (c) the respective dates of the requests;
 - (d) the nationality of the person; and
 - (e) the ordinary place of residence of the person.

ARTICLE 10**SURRENDER OF PERSON TO BE EXTRADITED**

1. The requested State shall, as soon as a decision on the request for extradition has been made, communicate that decision to the requesting State through the diplomatic channel.
2. Where extradition of a person for an offence is granted, the person shall be removed from the territory of the requested State from a point of departure in the territory of that State convenient to the requesting State.
3. The requesting State shall remove the person from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may refuse to extradite him for the same offence.
4. If circumstances beyond its control prevent a State from surrendering or removing the person to be extradited it shall notify the other State. The two Contracting States shall agree upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 11**SURRENDER OF PROPERTY**

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.
2. Subject to the qualifications of paragraph 1 of this Article, the abovementioned property shall, if the requesting State so requests, be surrendered to the requesting State even if the extradition, having been consented to, cannot be carried out owing to the death or escape of the person sought.
3. Where the law of the requested State or the rights of third parties so require, any articles so surrendered shall be returned to the requested State free of charge if that State so requests.

SCHEDULE—continued

ARTICLE 12

RULE OF SPECIALITY

1. Subject to paragraph 3 of this Article, a person extradited under this Treaty shall not:
 - (a) be detained or tried, or be subjected to any other restriction of personal liberty, in the territory of the requesting State for any offence committed before the extradition other than:
 - (i) an offence for which extradition was granted or any other extraditable offence of which he could be convicted upon proof of the facts upon which the request for his extradition was based provided that that offence does not carry a penalty which is more severe than that which could be imposed for the offence for which extradition was sought; or
 - (ii) any other extraditable offence in respect of which the requested State consents to his being so detained, tried or subjected to a restriction of personal liberty.
2. A request for the consent of the requested State under this Article shall be accompanied by the documents mentioned in Article 5.
3. Paragraph 1 of this Article does not apply if the person has had an opportunity to leave the requesting State and has not done so within forty-five days of final discharge in respect of the offence for which that person was extradited or if the person has returned to the territory of the requesting State after leaving it.

ARTICLE 13

RE-EXTRADITION TO A THIRD STATE

1. Where a person has been surrendered to the requesting State by the requested State, the first-mentioned State shall not surrender that person to any third state for an offence committed before his surrender unless:
 - (a) the requested State consents to that surrender; or
 - (b) the person has had an opportunity to leave the requesting State and has not done so within forty-five days of final discharge in respect of the offence for which that person was surrendered by the requested State or has returned to the territory of the requesting State after leaving it.
2. Before acceding to a request pursuant to sub-paragraph 1 (a) of this Article, the requested State may request the production of the documents mentioned in Article 5.

ARTICLE 14

TRANSIT

1. Where a person is to be extradited to a Contracting State from a third state or from a Contracting State to a third state through the territory of the other Contracting State, the Contracting State to which or from which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.
2. Upon receipt of such a request the requested Contracting State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so.
3. Permission for the transit of a person shall, subject to the laws of the requested Contracting State, include permission for the person to be held in custody during transit.

SCHEDULE—continued

4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.
5. The Contracting State to which or from which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

ARTICLE 15**REPRESENTATION AND EXPENSES**

1. The requested State shall make all necessary arrangements for and meet the cost of the representation of the requesting State in any proceedings arising out of a request for extradition and shall otherwise represent the interest of the requesting State.
2. The requested State shall bear the expenses incurred in its territory in the arrest of the person whose extradition is requested, and in the maintenance in custody of the person until he is surrendered to a person nominated by the requesting State.
3. The requesting State shall bear the expense incurred in conveying the person from the territory of the requested State.

ARTICLE 16**ENTRY INTO FORCE AND TERMINATION**

1. This Treaty shall enter into force thirty days after the Contracting States have notified each other that the constitutional requirements for the entry into force of this Treaty have been complied with.
2. On the entry into force of this Treaty, the Treaty between the United Kingdom and Greece for the Mutual Surrender of Fugitive Criminals, signed at Athens on 24 September 1910, shall cease to be in force between Australia and the Hellenic Republic.
3. Requests for extradition made after the entry into force of this Treaty shall be governed by its provisions, including Article 2, whatever the date of the commission of the offence.
4. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given.

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

DONE at ATHENS on the 13th day of APRIL One thousand nine hundred and eighty seven in two originals in the English and Greek languages both texts being equally authentic.

For Australia
Lionel Bowen

For the Hellenic Republic
Eleftherios Veryvakis

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 23 May 1991.