



Extradition (Republic of Italy) Regulations

Statutory Rules 1988 No. 291 as amended

made under the

Extradition Act 1988

This compilation was prepared on 19 January 2001
taking into account amendments up to SR 1990 No. 136

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1 Citation [see Note 1]

These Regulations may be cited as the Extradition (Republic of Italy) Regulations.

2 Interpretation

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

3 Declaration of Republic of Italy as extradition country

The Republic of Italy is declared to be an extradition country.

4 Application of Act

The Act applies in relation to the Republic of Italy subject to the Treaty of Extradition Between Australia and the Republic of Italy done at Milan on 26 August 1985 (being the treaty a copy of the English text of which is set out in the Schedule).

**Schedule Treaty of extradition between
Australia and the Republic of
Italy**

(regulation 4)

TREATY OF EXTRADITION
BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY

Australia and the Republic of Italy,

DESIRING to make more effective the co-operation of the two countries
in the repression of crime,

HAVE AGREED as follows:

ARTICLE 1
OBLIGATION TO EXTRADITE

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

ARTICLE 2
EXTRADITABLE OFFENCES

1. Extraditable offences are offences which, at the time of the request for extradition, are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a 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 six months of such penalty remains to be served.
2. An offence shall also be an extraditable offence if it consists of an attempt to commit, or participation in the commission of, an offence described in paragraph 1 of this Article. Any type of association to

commit offences described in paragraph 1 of this Article, as provided by the law of Italy, and conspiracy to commit an offence described in paragraph 1 of this Article, as provided by the law of Australia, shall also be extraditable offences.

3. It shall not matter whether the laws of the Contracting Parties place the acts or omissions constituting the offence within a different category of offence or denominate the offence by different terminology.

4. In determining whether an offence is an offence against the laws of both Contracting Parties, the totality of the acts or omissions alleged against the person sought shall be taken into account.

ARTICLE 3

PLACE OF COMMISSION OF OFFENCE

When an offence has been committed outside the territory of the requesting Party, the requested Party may grant extradition if its law provides for the punishment of such an offence or if the person sought is a national of the requesting Party.

ARTICLE 4

REFUSAL OF EXTRADITION

Extradition shall not be granted if:

- (a) the offence for which extradition is requested is regarded by the requested Party as a political offence; or
- (b) the requested Party has 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 opinions or that that person's position may be prejudiced for any of those reasons; or
- (c) the offence for which extradition is requested is an offence under military law, which is not an offence under the ordinary criminal law; or
- (d) final judgement has been passed in the requested Party or in a third State in respect of the offence for which the person's surrender is sought; or

- (e) the person whose surrender is sought has, according to the law of either the requesting Party or the requested Party, become immune from prosecution or punishment by reason of lapse of time.

ARTICLE 5
DISCRETIONARY REFUSAL

1. Extradition may be refused if:
 - (a) the person sought is a national of the requested Party. Where the requested Party refuses to extradite one of its nationals it shall, if the other Party so requests and the law of the requested Party 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 sought may be taken; or
 - (b) the competent authorities of the requested Party have decided to refrain from prosecuting the person sought for the offence in respect of which extradition is requested and in respect of which the requested Party has jurisdiction; or
 - (c) a prosecution in respect of the offence for which extradition is requested is pending in the territory of the requested Party against the person whose extradition is sought; or
 - (d) the offence for which extradition is requested is regarded under the law of the requested Party as having been committed in whole or in part within its territory.

ARTICLE 6
CAPITAL PUNISHMENT

If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out by it, extradition may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that the penalty will not be carried out.

ARTICLE 7
WITHDRAWAL OF REQUEST

The requested Party may recommend to the requesting Party that a request for extradition be withdrawn, specifying the reasons therefore, where it considers, taking into account the age, health or other personal circumstances of the person sought, that extradition should not be requested.

ARTICLE 8
POSTPONEMENT OF SURRENDER

1. The requested Party may postpone surrender 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 his extradition is requested and where the requested Party so postpones the surrender, it shall advise the requesting Party accordingly.
2. The requested Party may, in accordance with its law, temporarily surrender the person sought to the requesting Party on conditions to be determined by mutual agreement between the Parties.
3. The provisions of this Article do not derogate from the obligation of the requested Party to deal with requests under this Treaty expeditiously.

ARTICLE 9
CONSENT EXTRADITION

If a person sought consents, in accordance with the law of the requested Party, to an order for his surrender being made, that person may be surrendered accordingly.

ARTICLE 10
EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS

1. The request for extradition shall be made in writing and shall be communicated through the diplomatic channel.
2. The request for extradition shall be accompanied:
 - (a) by the text of the relevant provisions of the law creating the offence, the provisions of the law relating to time limitation and to the punishment that can be imposed for the offence;

- (b) by information or documentation establishing that the person whose surrender is sought is the person accused of or convicted of the extraditable offence;
 - (c) if the person is accused or has been convicted in his absence of an offence, by a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is sought and a statement of the acts or omissions which are alleged against the fugitive in respect of each offence;
 - (d) 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; and
 - (e) 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.
3. Any conviction referred to in paragraph 2 means final conviction after ordinary appeal rights have been exhausted.
4. The documents submitted in support of a request for extradition shall be accompanied by a translation in the language of the requested Party.

ARTICLE 11
AUTHENTICATION

1. All documents submitted in support of a request for extradition shall be duly authenticated. A document that, in accordance with Article 10, accompanies a request for extradition shall be admitted in evidence, if duly authenticated, in any extradition proceedings in the territory of the requested Party.
2. A document is duly 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 Party; 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 Party or of a department or officer of the Government of the requesting Party.

ARTICLE 12

ADDITIONAL INFORMATION

1. If the requested Party considers that the documentation furnished in support of a request is not sufficient in accordance with this Treaty to enable the extradition to be granted, that Party may request that 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 in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the requesting Party 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 Party shall notify the requesting Party as soon as practicable.

ARTICLE 13

PROVISIONAL ARREST

1. In case of urgency, a Contracting Party may apply for the provisional arrest of a person sought. The application for provisional arrest shall be made through the diplomatic channel or between the Department of Justice of Italy and the Attorney-General's Department of Australia, in which case the facilities of the International Criminal Police Organisation (INTERPOL) may be used. The application may be transmitted by post or telegraph or by any other means affording a record in writing.
2. The application shall contain a description of the person sought, a statement that extradition is to be requested, 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 Party, a concise statement of the acts or omissions alleged to constitute the offence.

3. On receipt of such an application the requested Party shall take the necessary steps, in accordance with its law, to secure the arrest of the person sought and the requesting Party shall be promptly notified of the result of its request.

4. A person arrested upon such an application shall be set at liberty upon the expiration of forty-five days from the date of his arrest if a request for his extradition, supported by the documents specified in Article 10, has not been received.

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

ARTICLE 14
CONFLICTING REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the requested Party shall determine to which of those States the person is to be extradited and shall notify the requesting Party of its decision.

2. In determining to which State a person is to be extradited, the requested Party 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 and ordinary place of residence of the person;
and
- (e) the possibility of subsequent extradition to another State.

ARTICLE 15
SURRENDER

1. The requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial rejection.
2. Where extradition is granted the requested Party shall surrender the person from a point of departure in its territory convenient to the requesting Party.
3. The requesting Party shall take the person from the territory of the requested Party within such reasonable period as the requested Party specifies and, if the person is not taken from the said territory within that period, the requested Party may refuse to extradite him for the same offence.
4. If circumstances beyond its control prevent a Party from complying with the date of surrender, it shall notify the other Party. The Contracting Parties shall agree upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

ARTICLE 16
SURRENDER OF PROPERTY

1. To the extent permitted under the law of the requested Party and subject to the rights of third persons, which shall be duly respected, all property found in the territory of the requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the requesting Party so requests, be surrendered if extradition is granted.
2. The abovementioned property shall, if the requesting Party so requests, be surrendered to the requesting Party even if the extradition, having been consented to, cannot be carried out owing to the death or escape of the person sought.

3. If the property in question is liable to seizure or confiscation in the territory of the requested Party, the requested Party may, in connection with pending proceedings, temporarily retain it or hand it over on condition that it is returned without charge.

4. Where the rights of the requested Party or of third persons so require, any property surrendered under this Article shall be returned to the requested Party free of charge, if that Party so requests.

ARTICLE 17
RULE OF SPECIALITY

1. A person extradited under this Treaty shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence, or be otherwise restricted in his personal freedom, in the territory of the requesting Party for any offence committed before his surrender, other than the offence for which his extradition was granted, except:

- (a) where the requested Party consents in accordance with its law;
or
- (b) where the person extradited, having had an opportunity to leave the territory of the requesting Party, has not done so within 45 days of his final discharge in respect of the offence for which he was surrendered, or has returned to the requesting Party after leaving it.

2. If the description of the offence charged in the territory of the requesting Party is altered in the course of proceedings, the person extradited shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

3. A request for consent under this Article shall be accompanied by the relevant documents mentioned in Article 10, as well as by a record of any statement made by the extradited person in respect of the offence concerned.

ARTICLE 18
RE-EXTRADITION TO A THIRD STATE

1. Except in the circumstances referred to in Article 17, paragraph 1 (b), a person extradited under this Treaty shall not be surrendered to any third State for an offence committed before his surrender unless the requested Party consents to that surrender.
2. Before acceding to a request pursuant to paragraph 1 of this Article, the requested Party may request the production of the documents mentioned in Article 10.

ARTICLE 19
TRANSIT

1. Where a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the Contracting Party to which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.
2. Upon receipt of such a request the requested Party 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 law of the requested Party, include the custody of the person during transit.
4. Where a person is being held in custody pursuant to paragraph 3, the Contracting Party in whose territory the person is being held may direct that the person be released if his transportation is not continued within a reasonable time.
5. The Contracting Party to which the person is being extradited shall reimburse the other Contracting Party for any expense incurred by that Contracting Party in connection with the transit.

ARTICLE 20
EXPENSES

1. The requesting Party shall not be liable for the costs of any proceedings in the territory of the requested Party arising out of a request for extradition.
2. The requested Party 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.
3. The requesting Party shall bear the expenses incurred in conveying the person from the territory of the requested Party.

ARTICLE 21
MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Subject to any further treaty between them, the Contracting Parties agree to afford each other, in accordance with their national laws, mutual assistance in criminal matters, to the maximum extent possible, for the purposes of the investigation or prosecution of any offence under their jurisdiction.

ARTICLE 22
ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Treaty have been complied with. This Treaty shall also apply to requests related to offences committed prior to its entry into force.
2. The Treaty of Extradition between Australia and the Republic of Italy done at Canberra on the twenty-eighth day of November, One thousand nine hundred and seventy-three, shall cease to have effect on the entry into force of this Treaty.
3. Either Contracting Party 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 authorized thereto, have signed this Treaty.

DONE at MILAN on the 26th day of August One thousand, nine hundred and eighty five in English and Italian languages, both texts being equally authentic.

FOR AUSTRALIA
LIONEL BOWEN

FOR THE REPUBLIC OF ITALY
MINO MARTINAZZOLI

Table of Statutory Rules

Notes to the Extradition (Republic of Italy) Regulations

Note 1

The Extradition (Republic of Italy) Regulations (in force under the *Extradition Act 1988*) as shown in this compilation comprise Statutory Rules 1988 No. 291 amended as indicated in the Tables below.

Table of Statutory Rules

Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1988 No. 291	30 Nov 1988	1 Dec 1988 (<i>see Gazette</i> 1988, No. S366)	
1990 No. 136	25 June 1990	1 Aug 1990	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 4.....	rs. 1990 No. 136
Schedule	rs. 1990 No. 136
