

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF GUATEMALA

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

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

Have agreed as follows:

Article 1

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 imposition or execution of punishment for an extraditable offence.

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Article 2

Extraditable Offences

1. For the purpose of this Treaty, extraditable offences are offences which, at the time of the request, are punishable under the laws of both Parties by deprivation of liberty for a period of at least one year or by a more severe penalty.
2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least four (4) months of the sentence remains to be served.
3. For the purpose of this Article, in determining whether an offence is an offence against the laws of both Parties:
 - (a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;
 - (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 offence differ.
4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting Party.
5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. If the request for extradition refers to several offences each of which is punishable under the laws of both Parties, but some of which do not fulfill the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the offences provided that the person is to be extradited for at least one extraditable offence.

Article 3

Mandatory Refusal of Extradition

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

1. when the Requested Party determines that the offence for which extradition is requested is a political offence or an offence connected with a political offence. Reference to a political offence shall not include the following offences:

(a) the taking or attempted taking of the life or an attack on the person of a Head of State or a Head of Government or a member of his or her family;

(b) an offence in respect of which the Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both parties, including but not limited to such agreements relating to genocide, terrorism or kidnapping.

2. when the person sought is being proceeded against or has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which his extradition is requested;

3. when the prosecution or the punishment for the offence for which extradition is requested would have been barred by the lapse of time under the law of the Requested Party had the same offence been committed in the Requested Party. Acts or circumstances that would suspend the lapse of time under the law of the Requesting Party shall be given effect by the Requested Party, and in this regard the Requesting Party shall provide a written statement of the relevant provisions of its law relating to the lapse of time;

4. 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, sex or political opinion, or that that person's position may be prejudiced for any of those reasons.

Article 4

Discretionary Refusal of Extradition

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

1. when the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within its territory;

2. when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;

3. when, in exceptional cases, the Requested Party while also taking into account the seriousness of the offence and the interests of the Requesting Party deems that, because of the personal circumstances of the person sought, the extradition would be incompatible with humanitarian considerations;

4. when the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law.

Article 5

Postponement of Extradition

When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may postpone surrender until the

conclusion of the proceeding or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of its decision.

Article 6

Extradition of Nationals

1. Neither of the Parties shall be bound to extradite its own nationals under this Treaty, but the Requested Party shall have the power to extradite such person if, in its discretion, it is deemed proper to do so.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution.
3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7

Extradition Procedures and Required Documents

1. All request for extradition shall be submitted in writing through the diplomatic channel.
2. All request for extradition shall be supported by:
 - (a) documents which describe the identity, and, if possible, the nationality and location of the person sought;
 - (b) a statement of facts of the case;
 - (c) a statement of the laws describing the essential elements and the designation of the offence;
 - (d) a statement of the laws describing the punishment for the offence; and
 - (e) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence.
3. When the request for extradition relates to a person who has not yet been convicted, it shall be also accompanied by:
 - (a) a copy of the warrant of arrest or detention issued by a judge or other competent authority of the Requesting Party;
 - (b) information establishing that the person sought is the person to whom the warrant of arrest or detention refers; and
 - (c) such information as would provide reasonable grounds to believe that the person sought has committed the offence for which extradition is requested.
4. When the request for extradition relates to a person convicted, it shall be also 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 convicted; and
 - (c) a statement of the conduct constituting the offence for which the person was convicted.
5. All the documents 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 or in the English language.
6. A document is authenticated for the purpose of this treaty, if it has been signed and sealed by the competent authority of the Requesting Party and certified by the diplomatic or consular authority of the Requested Party resident in the Requesting Party.

Article 8

Supplementary Information

1. 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 supplementary information be furnished within such time as it specifies.
2. If the person whose extradition is sought is under arrest and the supplementary 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 new 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 9

Provisional Arrest

1. In case of urgency, a Party may request the provisional arrest of the person sought pending the presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Ministry of Justice of the Republic of Korea and the Supreme Court of the Republic of Guatemala.
2. The application for provisional arrest shall be in writing and contain:
 - (a) a description of the person sought, including information concerning the person's nationality;
 - (b) the location of the person sought, if known;
 - (c) a brief statement of the facts of the case, including, if possible, the time and location of the offence;
 - (d) a description of the laws violated;
 - (e) a statement of the existence of a warrant of arrest or detention, or a finding of guilt or judgment of conviction against the person sought; and
 - (f) a statement that a request for extradition for the person sought will follow.
3. The application may be transmitted by telegraph, fax or any other means affording a record in writing.
4. On receipt of such application, the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result.
5. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 7, within forty five (45) days after the date of notice of the provisional arrest to the Requesting Party, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article 10

Simplified Extradition

When a person sought advises a court or other competent authorities of the Requested Party that the person consents to an order for extradition being made, the Requested Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws.

Article 11

Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.
2. In determining to which State a person is to be extradited, the Requested Party shall consider all relevant factors, including but not limited to:

- (a) the nationality and ordinary place of residence of the person sought;
- (b) whether the requests were made pursuant to treaty;
- (c) the time and place where each offence was committed;
- (d) the respective interests of the Requesting States;
- (e) the gravity of the offences;
- (f) the nationality of the victim;
- (g) the possibility of further extradition between the Requesting States; and
- (h) the respective dates of the requests.

Article 12

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 refusal of a request for extradition.
2. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both Parties.
3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.
4. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party, and in this case the provisions of paragraph 3 of this Article shall not apply. The two Parties shall mutually decide upon a new date of surrender or removal on the conditions of this Article.

Article 13

Surrender of Property

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 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. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.
3. Where the law of the Requested Party or the protection of rights of third parties so requires, any property so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 14

Rule of Speciality

1. A person extradited under this Treaty shall not be detained, tried, or punished in the Requesting Party except for:
 - (a) the offence for which extradition has been granted, regardless of whether it is differently denominated based on the same facts on which extradition was granted, provided such differently denominated offence is extraditable, or is a lesser included offence;
 - (b) an offence committed after the extradition of the person; or
 - (c) an offence for which the Requested Party consents to the person's detention, trial, or punishment for the

offence.

For the purpose of this subparagraph:

(i) the Requested Party may require the submission of the documents called for in Article 7;

(ii) a legal record of statements made by the extradited person with respect to the offence, if any, shall be submitted to the Requested Party; and

(iii) the person extradited may be detained by the Requesting Party for such period of time as the Requested Party may authorize, while the request is being processed.

2. A person extradited under this Treaty shall not be extradited to a third State for an offence committed prior to his extradition unless the Requested Party consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

(a) that person leaves the territory of the Requesting Party after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the Requesting Party within 45 days of the day on which that person is free to leave.

Article 15

Notification of the Results

The Requesting Party shall timely notify the Requested Party of the information relating to the proceeding against or the execution of punishment upon the person extradited or the re-extradition of that person to a third state.

Article 16

Transit

1. To the extent permitted by its law, transportation of a person surrendered to one Party by a third State through the territory of the other Party shall be authorized on request in writing made through the diplomatic channel or directly between the Ministry of Justice of the Republic of Korea and the Supreme Court of the Republic of Guatemala.

2. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article.

Article 17

Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of the request for extradition.

2. The Requested Party shall bear the cost incurred in its territory in connection with the arrest and detention of the person whose extradition is sought, or the seizure and surrender of property.

3. The Requesting Party shall bear the cost incurred in conveying the person whose extradition is granted from the territory of the Requested Party and the cost of transit.

Article 18

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 Supreme Court of the Republic of Guatemala 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 19

Entry into Force and Termination

1. This Treaty is subject to ratification. This Treaty shall enter into force upon the exchange of the instruments of ratification.
2. This Treaty shall apply to requests for extradition made on and after the date it enters into force, regardless of the date of the commission of the offence.
3. Either Party may terminate this Treaty by notice in writing at any time. Termination shall take effect six (6) months after the date on which the notice is given.

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

DONE in duplicate at Guatemala on the 12th day of December 2003, in the Korean, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF KOREA FOR THE REPUBLIC OF GUATEMALA

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