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## TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF CHILE

Signed at Seoul November 21, 1994

Entered into force October 1, 1997

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

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

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 person who is wanted for prosecution, trial or for the imposition or execution of a punishment in the territory of the Requesting Party for an extraditable offence.

### ARTICLE 2

#### EXTRADITABLE OFFENCES

1. For the purpose of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum 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 six(6) 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 Contracting Parties:
  - (a) it shall not matter whether the laws of the Contracting 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 Contracting 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 ground 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 provided that the conduct for which extradition is sought is an offence in the Requested Party.
5. Where the offence has been committed out side the territory of the Requesting Party extradition shall be

granted where the law 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. Extradition may be granted pursuant to the provisions of this Treaty in respect of an offence provided that:

- (a) it was an offence in the Requesting Party at the time of the conduct constituting the offence; and
- (b) the conduct alleged would, if it had taken place in the territory of the Requested Party at the time of the making of the request for extradition, have constituted an offence against the law in force in the territory of the Requested Party.

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

8. Extradition shall be granted in accordance with the provisions of this Treaty in respect of an offence referred to in any multilateral treaty by which both Contracting Parties are bound.

### **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 Head of Government or a member of his or her family;
- (b) an offence in respect of which the Contracting Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both parties; and
- (c) an offence relating to genocide, terrorism or kidnapping.

2. when the person sought is being proceeded against or has been tried and discharged or punished 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 be barred by reasons provided under the law of either Contracting Party including a 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 or political opinion, or that that person's position may be prejudiced for any of those reasons. The provision of this paragraph, however, shall not apply to the offences mentioned in subparagraphs (a), (b) and (c) of paragraph 1 of this Article.

### **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 offence carries the death penalty under the law of the Requesting Party, unless that Party gives sufficient grounds that the death penalty will not be sought, or if a sentence of death is imposed it will not be carried out;

3. 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; and

4. 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.

## **ARTICLE 5**

### **POSTPONEMENT OF SURRENDER AND TEMPORARY SURRENDER**

1. 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 surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

2. To the extent permitted by its laws, where a person has been found extraditable, the Requested Party may temporarily surrender the person sought for the purpose of prosecution to the Requesting Party in accordance with conditions to be determined between the Contracting Parties. A person who is returned to the Requested Party following a temporary surrender may be finally surrendered to serve any sentence imposed, in accordance with the provisions of this Treaty.

## **ARTICLE 6**

### **EXTRADITION OF NATIONALS**

1. Neither of the Contracting Parties shall be bound to deliver up its nationals under this Treaty but the competent authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.

2. Where a Contracting Party refuses extradition pursuant to paragraph 1 of this Article it shall submit the case to its 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 if its laws allow it and if so requested by the Requesting Party. That Party shall inform the Requested Party of any action taken and the outcome of any prosecution. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

## **ARTICLE 7**

### **CHANNEL OF COMMUNICATION**

Requests for extradition and any subsequent correspondence shall be communicated through the diplomatic channel.

## **ARTICLE 8**

### **EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS**

1. The request for extradition shall be made in writing. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 11.

2. The request for extradition shall be accompanied by:

- (a) documents which describe the identity and, if possible, the nationality of the person sought;
- (b) a statement of the laws describing the essential elements and the designation of the offence;
- (c) a statement of the laws describing the punishment for the offence; and
- (d) 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 found guilty, it shall be accompanied by:

- (a) a copy of the warrant of arrest issued by a judge of the Requested Party, and copies of substantial documents which support the warrant of arrest;
- (b) information establishing that the person sought is the person to whom the warrant of arrest refers; and
- (c) a statement of the conduct alleged to constitute the offence such as would provide reasonable grounds to suspect that the person sought has committed the offence for which extradition is requested.

4. When the request for extradition relate to a person found guilty, it shall be accompanied by:

- (a) a copy of the sentence imposed by a court of the Requesting Party;
- (b) information establishing that the person sought is the person found guilty; and
- (c) a statement of the conduct constituting the offence for which the person was found guilty.

## **ARTICLE 9 LANGUAGE**

All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be accompanied by a translation in the language of the Requested Party or another language acceptable to that Party.

## **ARTICLE 10 ADDITIONAL 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 additional information be furnished within such time as it specifies.
2. If the person whose extradition is sought 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 new request for 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 possible.

## **ARTICLE 11 AUTHENTICATION OF SUPPORTING DOCUMENTS**

1. A document that, in accordance with Article 8, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the Requested Party.
2. A document is authenticated for the purposes of this Treaty, if it purports to be signed or sealed or certified by a competent officer of the Requesting Party and legalized by a competent diplomatic or consular officer of the Requested Party.

## **ARTICLE 12 PROVISIONAL ARREST**

1. In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. 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 through the diplomatic channel, a statement of the existence of the relevant documents mentioned in paragraph 3 or paragraph 4 of Article 8 authorizing the apprehension of 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 conduct alleged to constitute the offence.

3. On receipt of such an application the Requested Party shall take the necessary steps to secure the arrest of the person claimed and the Requesting Party shall be promptly notified of the result of its request.

4. 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 8, within fifty(50) days from the date of arrest, 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 13 SIMPLIFIED EXTRADITION**

The Requested Party may grant extradition without accomplishing the formalities stated in this Treaty if the person sought, after having been informed about his rights to extradition proceedings, explicitly consents to be extradited.

### **ARTICLE 14 REQUESTS FROM THAN ONE STATE**

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 have regard to all the relevant circumstances and in particular, to:

- (a) if the requests relate to different offences, the relative seriousness of those offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person sought; and
- (e) the ordinary place of residence of the person.

### **ARTICLE 15 COMMUNICATION OF THE DECISION**

The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate the decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of a request for extradition.

### **ARTICLE 16 NON BIS IN IDEM**

Once the extradition request has been ultimately refused, a new request may not be submitted for the same offence.

### **ARTICLE 17 SURRENDER**

1. 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 Contracting Parties.

2. 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.

3. If circumstances beyond control prevent a Contracting Party from surrendering or removing the person to be extradited, it shall notify the other Contracting Party. The two Contracting Parties shall mutually decide upon a

new date of surrender or removal, and the provisions of paragraph 2 of this Article shall apply.

## **ARTICLE 18 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 or escape of the person sought.
3. Where the laws of the Requested Party or the rights of third parties so require, any property so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

## **ARTICLE 19 PRINCIPLE OF SPECIALITY**

1. A person who has been extradited under this Treaty shall not be detained, proceeded or tried for any offence committed before extradition other than that for which extradition has been granted, nor extradited to a third State for any offence, 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 days after being free to do so; or
  - (c) when the Requested Party consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 8 and a record of any statement made by the extradited person in respect of the offence concerned.

Consent may be given when the offence for which it is requested is extraditable in accordance with the provisions of this Treaty.

2. Paragraph 1 of this Article shall not apply to offences committed after the extradition.

## **ARTICLE 20 TRANSIT**

1. To the extent permitted by its law, the right to transport through the territory of either Contracting Party a person surrendered to the other Contracting Party by a third state shall be granted on request in writing made through the diplomatic channel.
2. The request may be refused if reasons of public order are opposed to the transit.
3. Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the Party of transit in maintaining custody.
4. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party 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. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Contracting Party of transit. If an unscheduled landing occurs in the territory of that Party it may require the other Contracting Party to furnish a request for transit as provided in paragraph 1 of this Article. The

Contracting Party of transit shall detain the person to be transported until the transportation is continued provided that the request is received within ninety-six(96) hours of the unscheduled landing.

## **ARTICLE 21 EXPENSES**

The expenses incurred in any proceedings in relation to the arrest, custody, maintenance and transportation of the person extradited, as well as those incurred by the seizure and delivery of property, shall be borne by the Requested Party until the time of the surrender. Whilst those expense incurred after the surrender of the person or of the property shall be borne by the Requesting Party.

## **ARTICLE 22 REPRESENTATION IN THE STATE OF THE REQUESTED PARTY**

The Requesting Party may assign a representative formally authorized to act before the judicial authority in extradition procedures. The aforementioned representative shall be formally notified in order to be able to be heard in accordance with the law of the Requested Party before the decision regarding the extradition is made.

## **ARTICLE 23 ENTRY INTO FORCE AND TERMINATION**

1. This Treaty shall enter into force 30 days after the date of the last notification between the Contracting Parties that their respective constitutional and legal requirements have been complied with.
2. All extradition requests submitted after the entry into force of this Treaty shall be governed by this Treaty whatever the date of the commission of the offence.
3. Either Contracting Party may terminate this Treaty by means of a notice in writing at any time, and the Treaty shall cease to be in force 180 days after the date of the notice.

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

DONE in duplicate at Seoul this 21st day of November 1994, in the Korean, the Spanish and the 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 CHILE

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