

Administering Dep
documents sent i
tariff in connect
Ex. Co. Secretar



insertion of signatures and date of making, and send
to: Legislative Services Section,
Office of Legislative Drafting, Attorney-General's
Department,



Statutory Rules 1990 No. 1

374

Extradition (Republic of Korea) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Extradition Act 1988*.

Dated 29 November 1990.

BILL HAYDEN

Governor-General

By His Excellency's Command,

Michael Duffy.
Attorney-General

Citation

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

Commencement

2. These Regulations commence on 16 January 1991.

Interpretation

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

Declaration of Republic of Korea as extradition country

4. The Republic of Korea is declared to be an extradition country.

Application of Act

5. The Act applies in relation to the Republic of Korea subject to the Treaty on Extradition between Australia and the Republic of Korea done at Seoul on 5 September 1990 (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 REPUBLIC OF KOREA**

Australia and the Republic of Korea.

DESIRING to make more effective the co-operation of the two countries in the 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 persons who are wanted for prosecution, trial or for the imposition or execution of punishment in the territory of the Requesting Party for an extraditable offence.

Article 2**Extraditable Offences**

1. For the purposes 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 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 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 law of both Contracting Parties:
 - (a) it shall not matter whether the laws of the Contracting Parties 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 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 matter, 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.
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. 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 acts or omissions constituting the offence; and
 - (b) the acts or omissions alleged would, if they had taken place in the territory

SCHEDULE—continued

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.

Article 3

Information Required

Extradition shall be granted only if there is sufficient information as would provide reasonable grounds to suspect, according to the laws of the Requested Party, that the person sought has committed the offence for which extradition is requested or information establishing that the person sought is the person convicted by the courts of the Requesting Party.

Article 4

Exceptions to Extradition

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

- (a) 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:
 - (i) 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;
 - (ii) 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
 - (iii) an offence against the law relating to genocide.
- (b) if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person for any reason which would be grounds for refusing extradition under the law of the Requested Party or that that person's position may be prejudiced for any of those reasons;
- (c) if the person sought may be, or has been, tried or sentenced by an extraordinary or ad hoc tribunal. For the purposes of this sub-paragraph, a constitutionally established and constituted court-martial is not to be regarded as an extraordinary or ad hoc tribunal;
- (d) if final judgment has been passed in the territory of the Requested Party or in a third State upon the person sought in respect of the offence for which the person's extradition is sought;
- (e) when the prosecution or the punishment for the offence for which extradition is requested would be barred by reasons prescribed under the law of either Contracting Party including a law relating to the lapse of time.

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

- (a) if 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;
- (b) if a prosecution in respect of the offence for which extradition is sought is pending in the territory of the Requested Party against the person whose extradition is sought;
- (c) if the competent authorities of the Requested Party have decided to refrain

SCHEDULE—continued

from prosecuting the person for the offence in respect of which extradition is sought;

- (d) if 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 Party unless that Party undertakes that the death penalty will not be imposed or, if imposed, will not be carried out;
- (e) if, in exceptional cases, the Requested Party while also taking into account the nature 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.

3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting Parties under any multilateral Convention.

Article 5**Postponement of Extradition**

The Requested Party may postpone the extradition of a person in order to proceed against that person, or so that that person may serve a sentence, for an offence other than an offence constituted by an act or omission for which extradition is sought. In such case the Requested Party shall advise the Requesting Party accordingly.

Article 6**Extradition of Nationals**

1. Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the executive 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 party refuses extradition pursuant to paragraph 1 of this Article it may 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 that is considered appropriate.

Article 7**Territorial Application**

1. For the purposes of this Treaty, the territory of a Contracting Party shall include all the territory under the jurisdiction of that Contracting Party, including air space and territorial waters and vessels registered in that Contracting Party, and aircraft registered in that Contracting Party if any such aircraft is in flight when the offence is committed.
2. For the purposes of this Article an aircraft shall be considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation.

Article 8**Extradition Procedures and Required Documents**

1. The request for extradition shall be made in writing through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 10.
2. The request for extradition shall be accompanied by:

SCHEDULE—continued

- (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 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) a statement of the acts and omissions 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 relates to a person found guilty, it shall be accompanied by:
- (a) a copy of the judgment finding guilt imposed by a court of the Requesting Party;
 - (b) information establishing that the person sought is the person found guilty;
 - (c)
 - (i) if the person found guilty has not been sentenced, a copy of the warrant of arrest and a statement of intention to impose a sentence; or
 - (ii) if the person found guilty has been sentenced a copy of the sentence imposed and a statement showing to what extent the sentence has not been carried out; and
 - (d) a statement of the acts or omissions constituting the offence for which the person was found guilty.
5. 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.

Article 9

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 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.

SCHEDULE—continued**Article 10****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 territory of the Requested Party.
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 other judicial officer in or of the Requesting Party; and
 - (b) it purports to be sealed by an official or public seal of the Requesting Party or of a Minister of State, or of a Department or officer of the Government, of the Requesting Party.

Article 11**Provisional Arrest**

1. In case of urgency a 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 document 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 acts or omissions 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 sixty 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 12**Simplified Extradition**

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

Article 13**Conflicting 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 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;

SCHEDULE—continued

- (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 14

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. Where extradition of a person for an offence is granted, the person shall be conveyed by the appropriate authorities of the Requested Party to a port or airport in the territory of that Party mutually acceptable to both Contracting 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 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 3 of this Article shall apply.

Article 15

Surrender of Property

1. To the extent permitted under the law 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 law of the Requested Party or the rights of third parties so require, any articles so surrendered shall be returned to the Requested Party free of charge if that Party so requests.

Article 16

Rule of Speciality

1. A person who has been extradited under this Treaty shall not be detained, prosecuted 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

SCHEDULE—continued

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 17**Transit**

1. The right to transport through the territory of one of the Contracting Parties a person surrendered to the other Contracting Party by a third State shall be granted on request 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 authorisation for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the State 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. Authorisation 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. The Party of transit shall detain the person to be transported until the transportation is continued provided that the request is received within 96 hours of the unscheduled landing.

Article 18**Expenses**

1. The Requested Party shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting Party.

2. The Requested Party shall bear 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 from the territory of the Requested Party.

Article 19**Entry into Force and Termination**

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

2. This Treaty shall also apply to any offence specified in Article 2 committed before this Treaty enters into force.

3. Either Contracting Party may terminate this Treaty at any time by giving six months' written notice to the other Contracting Party.

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

SCHEDULE—continued

DONE in duplicate, at Seoul on the fifth day of September one thousand nine hundred and ninety in the English and Korean languages, both texts being equally authentic,

MICHAEL DUFFY
FOR AUSTRALIA

LEE JONG-NAM
FOR THE REPUBLIC OF KOREA

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on h 1990.

6 December/