

Title Law of Extradition

1.Promulgated on April 17,1954.

2.Articles 15, 16, 17, 18, 20, 21, 22 amended and promulgated by Presidential Order July 4, 1980.

Article 1 Extradition shall be effected in accordance with treaties. Where there are no treaties or no provisions applicable to a case in existing treaties, the provisions of this Law shall prevail.

Article 2 Extradition may be approved if the offense is committed within the territory of the country making requisition therefor and if it is punishable both under the laws of the Republic of China and those of the country making such requisition; provided, that this shall not apply where under the laws of the Republic of China the maximum basic punishment for such offense is a punishment of imprisonment for not more than one year or higher.

Extradition may be approved if the offense is committed outside the territory of the country making requisition therefor and that of the Republic of China and if it is punishable under the laws of both of the two countries, provided, that this shall not apply where under the laws of the Republic of China the maximum basic punishment for the offense committed is a punishment of imprisonment for not more than one year or higher.

Article 3 Extradition may be refused if the act of offense is of military, political or religious nature; provided, that the following acts may not be considered as political offenses:

1. Murder with intent of a foreign chief of state or a senior member of a foreign government;
2. Act of rebellion of the Communists.

Article 4 Extradition shall be refused if the person whose surrender is requested for is a citizen of the Republic of China; provided, that this shall not apply if the person acquired the citizenship after the requisition for extradition is made.

A citizen of the Republic of China who commits an offense specified in the provisions of Articles 2 and 3 of this Law in the territory of a foreign country shall, after the requisition for extradition made by a foreign government is refused, be referred to a court which has jurisdiction over the case for trial.

Article 5 Extradition shall be refused if the offense for which the requisition for extradition is made has received a ruling of not to prosecute, or a judgment of not guilty, remission of punishment, exempt from prosecution or case not entertained, or a judgment imposing a sentence from, or if the case is being tried by, a court of the Republic of China, or if the offense has been pardoned.

If the person whose surrender is requested for commits another offense and is being accused in a court of the Republic of China, the extradition thereof shall be effected after the legal proceedings have been concluded or the execution of punishment has been completed.

Article 6 If more than one country make requisition for extradition of one and the same accused and approval should be granted in accordance with treaties or with the provisions of this Law, the following provisions shall be observed in their order of precedence in determining to which country the accused should be delivered up:

- 1.The country making requisition for extradition in accordance with existing treaties;
- 2.When all the countries making requisition are contracting parties to or are not contracting parties to, extradition treaties with the Republic of China, the accused shall be delivered up to the country within whose jurisdiction the offense took place;
- 3.When all the countries making requisition are contracting parties to, or are not contracting parties to, extradition treaties with the Republic of China, and none of such countries is locus criminis, the accused shall be delivered up to the country of which he is a subject;
- 4.When extradition is requested for by several countries who are contracting parties to, or are not contracting parties to, extradition treaties with the Republic of China, but the offenses with which the accused is charged differ, he shall be delivered up to the country presenting the most severe charge of offense; if the degree of severity of the punishments are all the same, the accused shall be delivered up to the country which first made the formal requisition for extradition.

Article 7 Without the consent of the Government of the Republic of China, the country to which an accused is delivered up may not prosecute or punish an offense other than that specified in the written requisition for extradition; provided, that this shall not apply if the person voluntarily chose to remain for ninety (90) days or more in that country after the conclusion of legal proceedings or the completion of the execution of punishment.

After a person has been extradited, if he commits another offense within the jurisdiction of the country to which he was delivered up, that country may prosecute or punish him accordingly.

Article 8 Without the consent of the Government of the Republic of China, a country to which an accused is delivered up may not surrender him to a third country; provided, that this shall not apply in the circumstance specified in the provision of paragraph 1 of the preceding article.

Article 9 A requisition for extradition shall be made to the Ministry of Foreign Affairs through diplomatic channels.

Article 10 A requisition for extradition from a foreign government shall be in writing, stating the following matters:

- 1.The name, sex, age, native place, occupation, domicile or residence, or other features of identification of the accused;
- 2.The facts and evidences of the offense and articles of the law violated;
- 3.Intent of requisition for extradition and assurance of reciprocity;
4. Assurance to observe the limitations specified in the first part of paragraph 1 of Article 7 and the first part of Article 8.

Article 11 A written requisition for extradition shall be accompanied by the following documents:

- 1.Evidences referred to in the written requisition for extradition;
- 2.A warrant for arrest of the accused, an indictment or conviction in writing, issued by the court which has jurisdiction over the case in the country making the requisition for extradition;

3. Existing laws or statutes relating to the punishment of the offense of the country making the requisition for extradition.
The documents specified in the preceding paragraph shall be duly authenticated; if the documents are in a foreign language, they shall be accompanied by duly authenticated Chinese translations.

Article 12 In case of emergency, a foreign government may, before presenting the written requisition for extradition, request by correspondence or cablegram the arrest and detention of the person to be extradited. However, the correspondence or cablegram shall state the matters listed in Article 10 and the fact that a public prosecution has been brought against such person or that a judgment of guilty has been pronounced.

In the circumstance specified in the preceding paragraph, the written requisition for extradition shall be presented within thirty (30) days from the date the accused is detained, failing which the detention shall be cancelled, and no requisition for extradition may be made on the same case.

Article 13 If a request for attachment of the properties and documents is made along with the requisition for extradition, such properties and documents shall be taken into custody with their descriptions and quantities noted, to be delivered up with the accused when the extradition is approved; provided, that this rule shall not apply to those which are owned by a third party or which may not be attached under the law of the Republic of China.

Article 14 A person extradited by one foreign government at the request of another may be allowed to pass through the territory of the Republic of China with the prior consent of the Government of the Republic of China; provided, that such consent may be refused if it is apprehended the passage may jeopardize the interests of the Republic of China.

Article 15 Ministry of Foreign Affairs, upon receiving a requisition for Extradition, must forward the same, together with other relevant documents to Ministry of Justice for relegation to the District Prosecutors' Office having jurisdiction over the accused's residence, where the accused's present location is unknown, the case must be referred to the appropriate District Prosecutors' Office.

Article 16 A duty prosecutor may, according to the provisions specified in the Criminal Procedural Code, give an order to apprehend and hold in custody the accused who is requested to be extradited so far as the cognizant Prosecutors' Office upon receiving the case of requisition for extradition.

Article 17 The prosecutor shall interrogate the accused within twenty-four (24) hours after he is arrested, inform him of the requisition for extradition, and forward the case as soon as possible to the court.

The court, upon receiving the case specified in the preceding paragraph, may issue a warrant to apprehend and hold in custody the accused in accordance with the provisions of the Criminal Procedure Code.

Article 18 The court shall, after receiving a case of requisition for extradition, inform the accused of the facts and evidences of the case, and order him to submit a reply in writing within sixty (60) days.

- Article 19** An accused may employ lawyers as advocates. The provisions of the Criminal Procedure Code in regard to employment of advocates shall apply mutatis mutandis to the procedure of such employment.
- Article 20** Upon expiration of the period specified in paragraph 2 of Article 12 and in Article 18, the court shall set a date and notify the prosecutor, the accused and his advocate for oral proceedings.
The court shall prepare a decision within five (5) days after the conclusion of oral proceedings, stating whether extradition should be approved. The court shall conclude a case of requisition for extradition within thirty (30) days after receipt of the reply in writing of the accused.
- Article 21** The court in charge, as soon as a written resolution is made, must have the case, with all papers pertinent thereto, report, through Prosecutors' Office, to the Ministry of Justice, to be eventually forwarded to Ministry of Foreign Affairs for transmittal to Executive Yuan, thence submitted to the President for a Presidential Resolution.
If a court cannot decide to which country the accused should be delivered up in accordance with the provision of Article 6, it shall be so stated in the written decision for final decision by the President.
- Article 22** If extradition is approved by the President, the cognizant Prosecutors' Office shall, after the receipt of the order from the Ministry of Justice, notify the accused thereof as soon as possible.
If the extradition is refused by the President, the cognizant Prosecutors' Office shall revoke the detention. The country making the requisition may not thereafter make requisition for extradition on the same case.
- Article 23** The Ministry of Foreign Affairs shall notify the foreign government making the requisition of the approval for extradition, asking it to assign personnel to receive the accused at a place deemed most appropriate in the territory of the Republic of China within a period of sixty (60) days.
If the country making the requisition fails to assign personnel to receive the accused and escort him out of the territory of the Republic of China within the period specified in the preceding paragraph, the accused shall forthwith be released. The country making the requisition may not thereafter request for extradition of the person on the same case.
- Article 24** Extradition shall be executed by personnel assigned by the Executive Yuan.
- Article 25** All expenses arising from the requisition for extradition shall be borne by the country making the requisition, regardless of whether the extradition is approved or not.
- Article 26** This Law shall become effective from the date of its promulgation.