



Extradition (Republic of Korea) Order 2002

Ivor Richardson, Administrator of the Government

Order in Council

At Wellington this 22nd day of April 2002

Present:

His Excellency the Administrator of the Government in Council

Pursuant to sections 15 and 17 of the Extradition Act 1999, His Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, and, in relation to clause 4, on the recommendation of the Minister of Justice made under section 17 of the Act, makes the following order.

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Order

1 Title and commencement

This order is the Extradition (Republic of Korea) Order 2002.

2 Commencement

This order comes into force on the day after the date of its notification in the *Gazette*.

3 Application of Part 3 of Extradition Act 1999 to Republic of Korea

Part 3 of the Extradition Act 1999 applies to the Republic of Korea in respect of the treaty set out in the Schedule.

4 Exempted country

The Republic of Korea is an exempted country to which section 25 of the Extradition Act 1999 applies.

Schedule

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Treaty on extradition between the Republic of Korea and New Zealand

The Republic of Korea and New Zealand (hereinafter referred to as “the Parties”),

Desiring to provide for more effective cooperation between the two States in the prevention and suppression 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, in accordance with the provisions of this Treaty, any person who is wanted for prosecution, trial, or the imposition or enforcement of a sentence in the Requesting Party for an extraditable offence.

Article 2

Extraditable Offences

1. For the purpose of this Treaty, extraditable offences are offences which 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 the conduct constitutes an offence against the laws of both Parties, the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether:
 - (a) 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; or
 - (b) 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 relates to several offences, each of which is punishable under the laws of both Parties, but some of which do not fulfil 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 an offence of a political nature. Reference to an offence of a political nature 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 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 hostage-taking;
2. when the person sought has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which extradition is requested;
3. when the prosecution or the enforcement of the sentence for the offence for which extradition is requested would have been barred by 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;
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, on account of that person's race, ethnic origin, religion, nationality, sex, other status or political opinion, or that that person's position may be prejudiced for any of those reasons;
5. when the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

6. when the Requested Party has substantial grounds for believing that the person sought would be in danger of being subjected to an act of torture if returned.

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. Where extradition is refused solely on this ground, the Requested Party shall, if the other Party so requests, submit the case to its competent authorities with a view to taking appropriate action against the person sought for the conduct for which extradition had been requested;
2. when the person sought has been finally acquitted or convicted in a jurisdiction other than that of either Party for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully served 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 carries the death penalty under the law of the Requesting Party, unless that Party undertakes that the death penalty will not be sought or, if imposed, will not be carried out;
5. when the person sought is being proceeded against in the Requested Party for an offence;
6. when the competent authorities of the Requested Party have decided either not to institute or to terminate proceedings against the person for the conduct for which extradition is requested.

Article 5

Postponed or 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 postpone surrender of the person sought until the proceeding has been concluded or the person has served the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.
2. The Requested Party may, instead of postponing surrender, temporarily surrender the person sought to the Requesting Party in accordance with conditions determined between the Parties.

Article 6

Extradition of Nationals

1. Extradition may be refused if the person sought is a national of the Requested Party.
2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, if the other Party so requests, submit the case to its competent authorities with a view to taking appropriate action against the person sought for the conduct for which extradition had been requested.

Article 7

Extradition Procedures and Required Documents

1. The request for extradition, together with the supporting documents, shall be submitted in writing through the diplomatic channel.
2. The request for extradition shall be accompanied by:
 - (a) a written statement setting out:
 - (i) the facts of the case, including the identity of the person sought;
 - (ii) the laws describing the essential elements and the designation of the offence;

- (iii) the laws describing the maximum penalty for the offence; and
 - (iv) the laws relating to the time limit, if any, on the prosecution or the enforcement of the sentence for the offence; and
- (b) if available, a physical description, photograph, fingerprints, and information concerning the nationality and probable location of the person sought.

For the purpose of paragraph 2(a) of this Article, a written statement is one which, if made falsely, would constitute an offence under the law of the Requesting Party.

3. When the request for extradition relates to a person who has not been convicted of an offence, it shall be 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) evidence that would justify committal for extradition in respect of the offence to which the request relates.

4. When the request for extradition relates to a person convicted of an offence, it shall be accompanied by:

- (a) a copy of the judgment finding guilt by a court of the Requesting Party or a court document that provides evidence of the person's conviction;
- (b) information establishing that the person sought is the person convicted; and
- (c) if the person has not been sentenced, a statement of intention to impose a sentence; or
- (d) if the person has been sentenced, a copy of the judgment or a court document that provides evidence of the sentence imposed, and a statement showing to what extent the sentence has not been carried out.

5. When the request for extradition relates to a person convicted of an offence in absentia, it shall be accompanied by the documents required by paragraphs 3(b) and 3(c), and paragraph 4 of this Article.

6. All the documents in support of the request that are required 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.
7. A document is authenticated for the purpose of this Treaty if it has been signed or certified by a judge or other officer of the Requesting Party and sealed by the official seal of the competent authority of 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 supplementary information furnished is not sufficient or is not received within the time specified and the person whose extradition is sought is released from custody or discharged in accordance with the law of the Requested Party, the release or discharge shall not preclude the Requesting Party from making a new request for the person's extradition.
3. Where the person is released from custody or discharged in the circumstances described in paragraph 2 of this Article, the Requested Party shall notify the Requesting Party as soon as practicable.

Article 9

Provisional Arrest

1. In urgent cases, 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 New Zealand Police.
2. The request for provisional arrest shall be made by any means that affords a record in writing and contain:

- (a) a brief statement of the facts of the case, including the identity of the person sought, and, if available, the time and location of the offence;
 - (b) if available, a physical description, photograph, fingerprints, and information concerning the nationality and probable location of the person sought;
 - (c) a brief statement of the laws describing the essential elements, the designation of the offence and the maximum penalty for the offence;
 - (d) a statement of the existence of a warrant of arrest or detention, a conviction or sentence imposed against the person sought, and, if sentenced, the remaining period of the sentence to be served; and
 - (e) a statement that a request for extradition for the person sought will follow.
3. On receipt of such a request, the Requested Party shall, subject to its law and if satisfied that the requirements of paragraphs 1 and 2 of this Article are met, take the necessary steps to secure the arrest of the person sought and shall promptly notify the Requesting Party of the result.
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 7, within forty five (45) 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 and documents are subsequently received.

Article 10

Simplified Extradition

When a person sought advises a court or other competent authorities of the Requested Party that he or she consents to extradition, 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 the other Party and any third State 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 the other Party 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 the ordinary place of residence of the person sought;
 - (b) the provisions of any extradition treaty or arrangement with any of the requesting States;
 - (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.
3. For the purposes of this Article, and Articles 15 and 17, “State” includes any territorial entity.

Article 12

Arrangements for Surrender

1. The Requested Party shall keep the Requesting Party informed of progress in dealing with the request, and, in particular, give prompt advice of the dates by which information is, or documents are, required. As soon as a decision on the request for extradition has been made, it shall communicate that decision to the Requesting Party through the diplomatic channel. Reasons shall be given for any complete or partial refusal of the 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. In that case, the Parties shall agree on the new date for surrender or removal and paragraph 3 of this Article applies accordingly.

Article 13

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 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 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 for any offence committed before surrender except for:

- (a) the offence or offences in respect of which extradition was granted; or
 - (b) an equivalent or lesser offence, carrying the same or lesser penalty, based on the conduct for which extradition was granted, if the offence is extraditable under this Treaty.
2. Paragraph 1 of this Article does not apply if:
- (a) the person has had an opportunity to leave the territory of the Requesting Party and has not done so within 45 days of having been free to do so or has voluntarily returned after having left; or
 - (b) the Requested Party consents to the person being dealt with in relation to any other offence.
3. If a request is made for consent as described in paragraph 2(b) of this Article, the Requested Party may require the submission of any document of the kind referred to in Article 7 and a record of any statement made by the extradited person with respect to the offence.

Article 15

Re-extradition to a Third State

1. A person extradited under this Treaty shall not be extradited to a third State for any offence committed before surrender unless:
- (a) the person has had an opportunity to leave the territory of the Requesting Party and has not done so within 45 days of having been free to do so or has voluntarily returned after having left; or
 - (b) the Requested Party consents to the person's extradition to the third State.
2. If a request is made for consent as described in paragraph 1(b) of this Article, the Requested Party may request the production of any document of the kind referred to in Article 7 that has been submitted by the third State.

Article 16

Notification

The Requesting Party shall advise the Requested Party of the outcome of the proceedings and, upon request, of the enforcement of the sentence or the re-extradition of the person extradited under this Treaty.

Article 17

Transit

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall make a request in writing to the other Party, through the channel specified in Article 9(1), for authorisation for the person to transit through its territory.
2. To the extent permitted by its law, the Requested Party shall authorise the transit.
3. Before authorising the transit, the Requested Party may request information of the kind specified in Article 9(2).
4. 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.

Article 18

Representation and Expenses

1. The Requested Party shall represent the interests of the Requesting Party in any proceedings arising out of a request for extradition and meet the expenses of those proceedings.
2. The Requested Party shall bear the expenses incurred in its territory in connection with the arrest and detention of the person sought or the seizure and surrender of property.

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

Article 19 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 competent authority of New Zealand 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 20 Entry into Force and Termination

1. The Parties shall notify each other in writing of the completion of their respective requirements for the entry into force of this Treaty. This Treaty shall enter into force 30 days after the date of receipt of the last notification.
2. This Treaty shall apply to offences committed before as well as after the date on which it enters into force.
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. Any request received before termination shall be dealt with as if the Treaty were still in force unless the Requesting Party withdraws the request.
4. This Treaty shall not apply to Tokelau unless the Parties have exchanged notes agreeing the terms on which this Treaty applies.

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

DONE at Seoul on this 15 day of May 2001, in duplicate in the English and Korean languages, both texts being equally authentic.

FOR NEW ZEALAND

R N Ferguson

FOR THE REPUBLIC OF KOREA

Han Seung-soo

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the day after the date of its notification in the *Gazette*, applies provisions of the Extradition Act 1999 (**the Act**) to the Republic of Korea.

Clause 3 applies Part 3 of the Act to the Republic of Korea to give effect in New Zealand to the extradition treaty between New Zealand and the Republic of Korea. The treaty is set out in the *Schedule*. Part 3 of the Act relates to the extradition of persons from New Zealand to certain treaty countries (of which the Republic of Korea will now be one) and certain other Commonwealth and other countries.

Clause 4 provides that the Republic of Korea is an exempted country to which section 25 of the Act applies.

Under Part 3 of the Act, a country seeking the surrender of a person from New Zealand must satisfy a court that there would be sufficient evidence to justify the person's trial in New Zealand if the alleged offence had occurred in New Zealand. In other words, a country requesting extradition must show a *prima facie* case against that person.

Section 25 provides that a record of the case may be submitted by, or on behalf of, an exempted country to the Court that is determining the eligibility of a person for surrender from New Zealand. This record may be received as evidence by the Court for the purposes of determining whether there is a *prima facie* case against the person. It must contain a summary of the evidence in support of the request for surrender, and other relevant documents, and must be accompanied

by certain statements from the exempted country about the material in it.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 26 April 2002.

This order is administered in the Ministry of Justice.
