

Korea-Vietnam Extradition Treaty

TREATY ON EXTRADITION BETWEEN THE REPUBLIC OF KOREA AND THE SOCIALIST REPUBLIC OF VIETNAM

Signed at Seoul September 15, 2003

Entered into force April 19, 2005

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

Desiring to provide for more effective cooperation between the two countries in the prevention and suppression of crime, and to facilitate relations between the two countries in the area of extradition by concluding a treaty for the extradition of offenders,

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 who is found in its territory and sought by the other Party for prosecution, trial, or execution of punishment for an extraditable offence.

Article 2 Extraditable Offences

1. For the purposes 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 six (6) months of the sentence remains to be served.
3. For the purposes 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

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 request is an offence bearing political character;
- (b) 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;
- (c) when the prosecution or the punishment for the offence for which extradition is requested would have been barred by prescription of 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;
- (d) 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.

2. The provision of paragraph 1(a) shall not be applicable to 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 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.

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 and Temporary Extradition

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 the extradition of the person sought 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 any postponement. When the conditions of the postponement no longer exist, the Requested Party shall promptly inform the Requesting Party and resume the process for extradition unless otherwise informed by the Requesting Party.

2. When the postponement of extradition referred to in paragraph 1 would bar the criminal proceedings due to the lapse of time or create a serious difficulty for the prosecution, the Requested Party may, at the request of the Requesting Party and pursuant to its laws, grant temporary extradition of the person whose extradition is sought.

3. The person whose temporary extradition is granted shall be returned as soon as the criminal proceedings are completed or the mutually agreed time permitted for the request for temporary extradition is ended. The Requested Party may extend, upon request, the initial agreed time period if it deems that reasonable grounds for such extension exist.

Article 6

Extradition of Nationals

1. Neither of the Parties shall be bound to extradite its own nationals under this Treaty.

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. The request for extradition shall be submitted in writing through the diplomatic channel.

2. The request for extradition shall be accompanied 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 found guilty, 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) a statement of the conduct alleged to constitute the offence such as would provide reasonable ground 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 of finding guilt 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.

5. All the documents to be presented by the Requesting Party pursuant to the provisions of this Treaty shall be certified and accompanied by a translation in the language of the Requested Party or in the English language.

6. A document is certified for the purposes of this Treaty, if it has been signed or certified by a judge or other competent officials 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 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. When 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 People's Supreme Procuracy of the Socialist Republic of Vietnam.

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. On receipt of such an 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.

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 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 the 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 Re-extradition

Where the person extradited has absconded the criminal proceeding against him and returned to the territory of the Requested Party, the Requesting Party may submit a request for re-extradition of that person, which shall be accompanied by the documents referred to in Article 7.

Article 14 Surrender of Property

According to the terms and conditions mutually agreed by the Parties and subject to the right of the 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 the extradition is granted.

Article 15 Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting Party except for:

- (a) the offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided such 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 competent authority of the Requested Party consents to the person's detention, trial, or punishment.

For the purposes 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 may 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 forty-five (45) days of the day on which that person is free to leave.

Article 16
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 17
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 People's Supreme Procuracy of the Socialist Republic of Vietnam.

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 18
Costs

1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a 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 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 People's Supreme Procuracy of the Socialist Republic of Vietnam 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. 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 offences committed before as well as after the date 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.

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

DONE in duplicate at Seoul on the 15th day of September 2003, in the Korean, Vietnamese 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 SOCIALIST REPUBLIC
OF VIETNAM