

Extradition Law of the People's Republic of China (Order of the President No.42)

Order of the President of the People's Republic of China

No. 42

The Extradition Law of the People's Republic of China, adopted at the 19th Meeting of the Standing Committee of the Ninth National People's Congress on December 28, 2000, is hereby promulgated and shall go into effect as of the date of Promulgation.

Jiang Zemin

President of the People's Republic of China

December 28, 2000

Extradition Law of the People's Republic of China

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Chapter I

General Provisions

Article 1 This Law is enacted for the purpose of ensuring normal extradition, strengthening international cooperation in punishing crimes, protecting the lawful rights and interests of individuals and organizations, safeguarding national interests and maintaining public order.

Article 2 This Law is applicable to extradition conducted between the People's Republic of China and foreign states.

Article 3 The People's Republic of China cooperates with foreign states in extradition on the basis of equality and reciprocity.

No cooperation in extradition may impair the sovereignty, security or public interests of the People's Republic of China.

Article 4 The People's Republic of China and foreign states shall communicate with each other through diplomatic channels for extradition. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communicating authority for extradition.

Where in an extradition treaty there are special provisions to govern the communicating authority, the provisions there shall prevail.

Article 5 In handling cases of extradition, compulsory measures including detention, arrest and residential surveillance may, depending on the circumstances, be taken against the person sought.

Article 6 The terms used in this Law are defined as follows:

(1) "the person sought" refers to the person for whom a request for grant of extradition is made by a requesting state;

(2) "the person extradited" refers to the person extradited from the requested state to the requesting state;

(3) "extradition treaty" refers to a treaty on extradition, which is concluded between the People's Republic of China and a foreign state or to which both the People's Republic of China and a foreign state are parties, or any other treaty which contains provisions in respect of extradition.

Chapter II

Request Made to the People's Republic of China for Extradition

Section 1

Conditions for Extradition

Article 7 Request for extradition made by a foreign state to the People's Republic of China may be granted only when it meets the following conditions:

(1) the conduct indicated in the request for extradition constitutes an offence according to the laws of both the People's Republic of China and the Requesting State; and

(2) where the request for extradition is made for the purpose of instituting criminal proceedings, the offence indicated in the request for extradition is, under the laws of both the People's Republic of China and the Requesting State, punishable by a fixed term of imprisonment for one year or more or by any other heavier criminal penalty; where the request for extradition is made for the purpose of executing a criminal penalty, the period of sentence that remains to be served by the person sought is at least six months at the time when the request is made.

If the request for extradition concerns miscellaneous offences which conform to the provisions of Subparagraph (1) of the preceding paragraph, as long as one of the offences conforms to the provisions of Subparagraph (2) of the preceding paragraph, extradition may be granted for all of those offences.

Article 8 The request for extradition made by a foreign state to the People's Republic of China shall be rejected if:

(1) the person sought is a national of the People's Republic of China under the laws of the People's Republic of China;

(2) at the time the request is received, the judicial organ of the People's Republic of China has rendered an effective judgement or terminated the criminal proceedings in respect of the offence indicated in the request for extradition;

(3) the request for extradition is made for a political offence, or the People's Republic of China has granted asylum to the person sought;

(4) the person sought is one against whom penal proceedings instituted or punishment may be executed for reasons of that person's race, religion, nationality, sex, political opinion or personal status, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;

(5) the offence indicated in the request for extradition is a purely military offence under the laws of the People's Republic of China or the laws of the Requesting State;

(6) the person sought is, under the laws of the People's Republic of China or the laws of the Requesting State, immune from criminal responsibility because, at the time the request is received, the limitation period for prosecuting the offence expires or the person is pardoned, or for other reasons;

(7) the person sought has been or will probably be subjected to torture or other cruel, inhuman or humiliating treatment or punishment in the Requesting State;

(8) the request for extradition is made by the Requesting State on the basis of a judgement rendered by default, unless the Requesting State undertakes that the person sought has the opportunity to have the case retried under conditions of his presence.

Article 9 The request for extradition made by a foreign state to the People's Republic of China may be rejected if:

(1) the People's Republic of China has criminal jurisprudence over the offence indicated in the request and criminal proceedings are being instituted against the person or preparations are being made for such proceedings; or

(2) extradition is incompatible with humanitarian considerations in view of the age, health or other conditions of the person sought.

Section II

Submission of the Request for Extradition

Article 10 The request for extradition made by the Requesting State shall be submitted to the Ministry of Foreign Affairs of the People's Republic of China.

Article 11 The Requesting State shall present a letter of request for extradition which shall specify:

(1) the name of the requesting authority;

(2) the name, sex, age, nationality, category and number of identification documents, occupation, characteristics of appearance, domicile and residence of the person sought and other information that may help to identify and search for the person;

(3) facts of the offence, including the time, place, conduct and outcome of the offence; and

(4) legal provisions on adjudgement, measurement of penalty and prescription for prosecution.

Article 12 A letter of request for extradition submitted by the Requesting State shall be accompanied by:

(1) where extradition is requested for the purpose of instituting criminal proceedings, a copy of the warrant of arrest or other document with the same effect; where extradition is requested for the purpose of executing criminal punishment, a copy of legally effective written judgment or verdict, and where part of punishment has already been executed, a statement to such an effect; and

(2) the necessary evidence of the offence or evidentiary material.

The Requesting State shall provide the photographs and fingerprints of the person sought and other material in its control which may help to identify that person.

Article 13 The letter of request for extradition and other relevant documents submitted by the Requesting State in accordance with the provisions of this Section shall be officially signed or sealed by the competent authority of the Requesting State and be accompanied by translations in Chinese or other languages agreed to by the Ministry of Foreign Affairs of the People's Republic of China.

Article 14 The Requesting State shall make the following assurances when requesting extradition:

(1) no criminal responsibility shall be investigated against the person in respect of the offences committed before his surrender except for which extradition is granted, nor shall that person be re-extradited to a third state, unless consented by the People's Republic of China, or unless that person has not left the Requesting State within 30 days from the date the proceedings in respect of the offence for which extradition is requested are terminated, or the person completes his sentence or is released before the sentence expires, or after leaving the country the person has returned of his own free will; and

(2) where after submitting the request for extradition, the Requesting State withdraws or waives it, or it is a mistake for the Requesting State to submit such a request, the Requesting State shall bear the responsibility for the harm thus done to the person.

Article 15 Where there is no extradition treaty to go by, the Requesting State shall make a reciprocity assurance.

Section 3

Examination of the Request for Extradition

Article 16 Upon receiving the request for extradition from the Requesting State, the Ministry of Foreign Affairs shall examine whether the letter of request for extradition and the accompanying documents and material conform to the provisions

of Section 2 in Chapter II of this Law and the provisions of extradition treaties.

The Higher People's Court designated by the Supreme People's Court shall examine whether the request for extradition made by the Requesting State conforms to the provisions of this Law and of extradition treaties regarding conditions for extradition and render a decision on it. The decision made by the Higher People's Court is subject to review by the Supreme People's Court.

Article 17 Where two or more states request extradition of the same person for the same or different conducts, the order of priority of the request for extradition shall be determined upon considering the factors such as the time when those requests for extradition are received by the People's Republic of China and the fact whether there are extradition treaties between the People's Republic of China and the Requesting States to go by.

Article 18 Where the Ministry of Foreign Affairs, after examination, believes that the request for extradition submitted by the Requesting State does not conform to the provisions of Section 2 in Chapter II of this Law or the provisions of extradition treaties, it may ask the Requesting State to furnish supplementary material within 30 days. The time limit may be extended for 15 days at the request of the Requesting State.

If the Requesting State fails to provide supplementary material within the time limit mentioned above, the Ministry of Foreign Affairs shall terminate the extradition case. The Requesting State may make a fresh request for extradition of the person for the same offence.

Article 19 Where the Ministry of Foreign Affairs, after examination, believes that the request for extradition submitted by the Requesting State conforms to the provisions of Section 2 in Chapter II of this Law and the provisions of extradition treaties, it shall transmit the letter of request for extradition and the accompanying documents and material to the Supreme People's Court and the Supreme People's Procuratorate.

Article 20 Where the person sought is detained for extradition before a foreign state makes a formal request for extradition, the Supreme People's Court shall, without delay, transmit the letter of request for extradition and the accompanying documents and material it has received to the Higher People's Court concerned for examination.

Where the said person is not detained for extradition before a foreign state makes a formal request for extradition, the Supreme People's Court shall, after receiving the letter of request for extradition and the accompanying documents and material, notify the Ministry of Public Security to search for the person. Once finding the person, the public security organ shall, in light of the circumstances, subject that person to detention or residential surveillance for extradition and the Ministry of Public Security shall notify the Supreme People's Court of the fact. Upon receiving the notification of the Ministry of Public Security, the Supreme People's Court shall, without delay, transmit the letter of request for extradition and the accompanying documents and material to the Higher People's Court concerned for examination.

Where, after searching, the public security organ is certain that the person sought is not in the territory of the People's Republic of China or it cannot find the person, the Ministry of Public Security shall, without delay, notify the Supreme People's Court of the fact. The latter shall, immediately after receiving the notification of the Ministry of Public Security, notify the Ministry of Foreign Affairs of the results of the search, and the Ministry of Foreign Affairs shall notify the Requesting State of the same.

Article 21 Where the Supreme People's Procuratorate, after examination, believes that the offence indicated in the request for extradition or other offences committed by the person sought are subject to prosecution by a Chinese Judicial organ, although criminal proceedings have not yet been instituted, it shall, within one month from the date the letter of request for extradition and the accompanying documents and material are received, notify the Supreme People's Court the Ministry of Foreign Affairs respectively of its opinions to institute criminal proceedings.

Article 22 The Higher People's Court shall, in accordance with the relevant provisions of this Law and of extradition treaties regarding conditions for extradition, examine the request for extradition made by the Requesting State, which shall be conducted by a collegial panel composed of three judges.

Article 23 When examining an extradition case, the Higher People's Court shall hear the pleadings of the person sought and the opinions of the Chinese lawyers entrusted by the person. The Higher People's Court shall, within 10 days from the date it receives the letter of request for extradition transmitted by the Supreme People's Court, serve a copy of the letter to the person. The person shall submit his opinions within 30 days from the date he receives the copy.

Article 24 After examination, the Higher Peoples' Court shall:

(1) where the request for extradition made by the Requesting State is regarded as being in conformity with the provisions of this Law and of extradition treaties, render a decision that the request meets the conditions for extradition. Where the person whose extradition requested falls under the category for postponed extradition according to Article 42 of this Law, it shall be so specified in the decision; or

(2) where the request for extradition made by the Requesting State is regarded not as being in conformity with the provisions of this Law and of extradition treaties, render a decision that no extradition shall be granted.

Upon request by the Requesting State, the Higher People's Court may, on condition that other proceedings being conducted in the territory of the People's Republic of China are not hindered and the lawful rights and interests of any third party in the territory of the People's Republic of China are not impaired, decided to transfer the property related to the case, while rendering the decision that the request meets the conditions for extradition.

Article 25 After making the decision that the request meets the conditions for extradition or the decision that no extradition shall be granted, the Higher People's Court shall have it read to the person sought and, within seven days from the date it makes the decision, submit the decision and the relevant material to the Supreme People's Court for review.

Where the person sought refuses to accept the decision made by the Higher People's Court that the request meets the conditions for extradition, he and the Chinese lawyers entrusted by him may, within 10 days from the date the People's Court has the decision read to the person, submit their opinions to the Supreme People's Court.

Article 26 The Supreme People's Court shall review the decision made by the Higher People's Court and shall do the following respectively:

(1) where it believes that the decision made by the Higher People's Court conforms to the provisions of this Law and of extradition treaties, it shall approve it; and

(2) where it believes that the decision made by the Higher People's Court does not conform to the provisions of this Law and of extradition treaties, it may quash it and send the case back to the People's Court which has originally reviewed it for fresh review, or modify the decision directly.

Article 27 In the course of examination, the People's Court may, when necessary, request through the Ministry of Foreign Affairs that the Requesting State provide supplementary material within 30 days.

Article 28 After making the decision of approval or modification, the Supreme People's Court shall, within seven days from the date it makes the decision, transmit the letter of decision to the Ministry of Foreign Affairs and, at the same time, serve it on the person sought.

After approving the decision or making the decision that no extradition shall be granted, the Supreme People's Court shall immediately notify the public security organ to terminate the compulsory measures against the person sought.

Article 29 After receiving the decision made by the Supreme People's Court that no extradition shall be granted, the Ministry of Foreign Affairs shall, without delay, notify the Requesting State of the same.

Upon receiving the decision made by the Supreme People's Court that the request meets the conditions for extradition, the Ministry of Foreign Affairs shall submit the decision to the State Council for which to decide whether to grant extradition.

Where the State Council decides not to grant extradition, the Ministry of Foreign Affairs shall, without delay, notify the Requesting State of the same. The People's Court shall immediately notify the public security organ to terminate the compulsory measures against the person sought.

Section IV

Compulsory Measures for Extradition

Article 30 Where before making a formal request for extradition, a foreign state applies, under urgent circumstances, for keeping in custody the person sought, the public security organ may detain the said person for extradition upon request by the foreign state.

The request mentioned in the preceding paragraph shall be submitted through diplomatic channels or to the Ministry of Public Security in written form and shall contain the following:

(1) the contents provided for in Articles 11 and 14 of this Law;

(2) statement of availability of the material provided for in Subparagraph (1), Article 12 of this Law; and

(3) statement that a formal request for extradition is to be made soon.

If the request is submitted through diplomatic channels, the Ministry of Foreign Affairs shall, without delay, transmit it to the Ministry of Public Security. If the request is submitted to the Ministry of Public Security, the Ministry of Public Security shall impart to the Ministry of Foreign Affairs information about the request.

Article 31 When the public security organ, in accordance with the provisions of Article 30 of this Law, takes measures to detain the person for extradition, as requested, if the request is submitted to the Ministry of Public Security, the Ministry of Public Security shall, without delay, notify the Requesting State of the fact; if the request is submitted through diplomatic channels, the Ministry of Public Security shall notify the Ministry of Foreign Affairs of the fact and the latter shall, without delay, notify the Requesting State of the same. When doing the notification through the above-mentioned channels, the time limit for

submitting a formal request for extradition shall be informed at the same time if the person has been detained for extradition as requested.

If, within 30 days after the public security organ takes the measure of detention for extradition, the Ministry of Foreign Affairs receives no formal request for extradition from the foreign state, the public security organ shall terminate the detention for extradition. At the request of the foreign state, the time limit may be extended for 15 days.

Where the detention for extradition is terminated in accordance with the provisions in the second paragraph of this Article, the Requesting State may make a formal request for extradition of that person for the same offence afterwards.

Article 32 After receiving the letter of request for extradition and the accompanying documents and material, the Higher People's Court shall, without delay, make a decision to arrest the person for extradition, where normal extradition may be impeded if such a measure is not taken. Where the measure of arrest for extradition is not taken against the person sought, a decision for residential surveillance shall be made without delay.

Article 33 Detention for extradition, arrest for extradition and residential surveillance for extradition shall be executed by the public security organs.

Article 34 The organ that takes a compulsory measure for extradition shall, within 24 hours after measure is taken, interrogate the person against whom the compulsory measure for extradition is taken.

The person against whom a compulsory measure for extradition is taken may, beginning from the date the compulsory measure is taken, employ Chinese lawyers for legal assistance. When executing the compulsory measure for extradition, the public security organ shall inform that person of the above-mentioned right he is entitled to.

Article 35 Where the person sought, who should otherwise be arrested for extradition, is seriously ill or is a woman who is pregnant or is breast-feeding her own baby, residential surveillance may be taken against him or her.

Article 36 After making the decision to grant the extradition, the State Council shall, without delay, notify the Supreme People's Court of the decision. If the person sought is not arrested for extradition, the People's Court shall immediately make a decision to arrest that person for extradition.

Article 37 If the foreign state withdraws or waives the request for extradition, the compulsory measure taken against the person sought shall be terminated immediately.

Section V

Execution of Extradition

Article 38 Extradition shall be executed by the public security organs. Where the State Council decides to grant extradition, the Ministry of Foreign Affairs shall, without delay, notify the Ministry of Public Security of the decision, and notify the Requesting State to consult with the Ministry of Public Security for arrangements with regard to the time, place, manners for surrender of the person sought and other matters related to execution of the extradition.

Article 39 Where extradition is to be executed in accordance with the provisions of Article 38 of this Law, the public security organ shall, in accordance with the decision of the People's Court, transfer the property related to the case to the Requesting State.

When extradition cannot be executed for reasons of death or escape of the person sought or for other reasons, the property mentioned above may, all the same, be transferred to the Requesting State.

Article 40 Where, within 15 days from the date agreed on for surrender, the Requesting State does not take over the person sought, it shall be regarded as waiving the request for extradition of its own accord. The public security organ shall immediately release the person, and the Ministry of Foreign Affairs may refuse to accept any fresh request by the Requesting State for extradition of the person for the same offence.

Where, for reasons beyond its control, the Requesting State fails to take over the person sought within the above-mentioned time limit, it may request an extension of the time limit for not more than 30 days, or seek to negotiate for fresh arrangements for surrender in accordance with the provisions of Article 38 of this Law.

Article 41 Where the person under extradition escapes back to the People's Republic of China before criminal proceedings are terminated or his sentence is served in the Requesting State, that person may be re-extradited upon a fresh request for extradition made the Requesting State in respect of the same offence and the Requesting State need not submit the documents and material provided for in Section 2 of this Chapter.

Section VI

Postponed and Temporary Extradition

Article 42 Where the judicial organ of the People's Republic of China is, for other reasons, conducting criminal proceedings or executing criminal punishment against the person sought, the State Council may decide to postpone the extradition while approving it.

Article 43 If postponed extradition may seriously impede the criminal proceedings in the Requesting State, the person sought may be extradited temporarily upon the request of the Requesting State on condition that the criminal proceedings being conducted in the territory of the People's Republic of China are not hindered and the Requesting State undertakes to send back that person unconditionally and immediately after concluding the relevant proceedings.

The decision on temporary extradition shall be made by the State Council after obtaining consent of the Supreme People's Court or the Supreme People's Procuratorate, as the case may be.

Section VII

Transit for Extradition

Article 44 Where extradition between foreign states involves transit through the territory of the People's Republic of China, the foreign states shall, in accordance with the relevant provisions of Article 4 and Section 2 of this Chapter of this Law, make a request for such transit.

The preceding paragraph is not applicable where air transport is used for transit and no landing in the territory of the People's Republic of China is scheduled. In the event of an unscheduled landing, a request for transit shall be submitted in accordance with the provisions of the preceding paragraph.

Article 45 The Ministry of Foreign Affairs shall, in accordance with the relevant provisions of this Law, examine the request for transit made by a foreign state, and make a decision on whether to permit it or not.

The decision to permit transit or to refuse transit shall be notified to the Requesting State by the Ministry of Foreign Affairs through the same channels as the ones through which the request is received.

After making the decision to permit transit, the Ministry of Foreign Affairs shall, without delay, notify the Ministry of Public Security of the same. The Ministry of Public Security shall decide on such matters as the time, place and manners for the transit.

Article 46 The public security organ in the place of transit shall supervise or assist in the execution of transit for extradition.

The public security organ may provide a temporary place for custody upon the request of the Requesting State.

Chapter 3

Request Made to Foreign States for Extradition

Article 47 When requesting a foreign state to grant extradition or transit for extradition, the adjudicative organ, procuratorate organ, public security organ, state security organ or prison administration organ responsible for handling the case concerned in a province, autonomous region and municipality directly under the Central Government shall submit its written opinions accompanied by relevant documents and material with certified correct translation respectively to the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice. After the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice have, respectively in conjunction with the Ministry of Foreign Affairs, reviewed the opinions and approved to make the request, the request shall be submitted to the foreign state through the Ministry of Foreign Affairs.

Article 48 Under urgent circumstances, before a formal request for extradition is made, the request to take compulsory measures against the person concerned may be submitted to the foreign state through diplomatic channels or other channels consented by the Requested State.

Article 49 The instruments, documents and material required for request for extradition, for transit for extradition, or for taking compulsory measures shall be submitted in accordance with the provisions of extradition treaties, or where there are no such treaties or no such provisions in such treaties to go by, the provisions of Sections 2, 4 and 7 of this Chapter may be applied *mutatis mutandis*, or where the Requested State raises specific requirements, those requirements may be complied with on condition that the basic principles contained in the laws of the People's Republic of China are not violated.

Article 50 Where the Requested State grants extradition with strings attached, the Ministry of Foreign Affairs may, on behalf of the Government of the People's Republic of China, make assurance on condition that the sovereignty, national interests and public interests of the People's Republic of China are not impaired. The assurance with regard to restriction on prosecution shall be subject to decision by the Supreme People's Procuratorate; the assurance with regard to measurement of penalty shall be subject to decision by the Supreme People's Court.

In investigating criminal responsibility of the person extradited, the judicial organ shall be bound by the assurance made.

Article 51 The public security organ shall be responsible for taking over the person whose extradition is granted by the foreign state as well as the property related to the case.

Where the request for extradition is made by other organs, the public security organ shall, after taking over the person extradited and the property related to the case, transfer them to the said organs without delay, or take over the said person and related property in conjunction with the organs concerned.

Chapter IV

Supplementary Provisions

Article 52 Where, in accordance with the provisions of this Law, whether to grant extradition is subject to decision by the State Council, the State Council may, when necessary, authorize relevant departments to make the decision.

Article 53 Where the person sought suffers any harm because the Requesting State, after submitting the request for extradition, withdraws or waives the request, or makes a mistake in requesting for extradition and the person presents a claim for compensation, such claim shall be presented to the Requesting State.

Article 54 The expenses arising from the handling of a case of extradition shall be defrayed in accordance with extradition treaties or agreements which both the Requesting State and the Requested State have acceded to or signed.

Article 55 This Law shall go into effect as of the date of promulgation.

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