

Extradition Act, B.E. 2551

Bhumibol Adulyadej, R.
Given on the 30th January B.E. 2551
Being the 6rd. Year of the Present Reign

His Majesty King Bhumibol Adulyadej has been graciously pleased to proclaim that

Whereas it is appropriate to revise the law on extradition;

This Act contains certain provisions in relation to restricting individual rights and liberty that Section 29, Section 32, Section 33 and Section 34 of the Constitution of the Kingdom of Thailand so permit by virtue of law,

His Majesty the King is, therefore, graciously pleased to direct that an Act be enacted by and with the advice and consent of the National Legislative Assembly as follows:

Section 1 This Act shall be called "Extradition Act, B.E. 2551"

Section 2 This Act shall enter into force after the period of 180 days as from the date of its publication in the Royal Gazette has elapsed.

Section 3 The Extradition Act, B.E. 2472 shall be repealed.

Section 4 This Act shall be enforced upon the extradition that is not contradictory to or consistent with provisions of the treaty respecting extradition between the Government of Thailand and Foreign Country or international organization.

Section 5 In this Act:

"Requesting State" means country, territory or international organization that requests extradition from Thailand;

"Requested State" means country, territory or international organization that Thailand requests extradition from.

"Central Authority" means the Attorney General or the person designated by the Attorney General having power and duty to coordinate the extradition for the Requesting State and the request for extradition to Thailand including other concerned activities.

"Competent Authority" means public prosecutor, corrections official, administrative or police official or other official having power and duty in the execution of extradition of each own part as notified by the Central Authority.

Section 6 The Minister of Foreign Affairs and the Minister of Justice shall take charge of the execution under this Act and be empowered to issue the Ministerial Regulation for implementing this Act in accordance with the part of power and duty of each Ministry.

Such Ministerial Regulation upon publishing in the Royal Gazette shall come into force.

Chapter 1 General Provisions on Extradition

Section 7 An offence to be extraditable must be a criminal one that both the law of the Requesting State and Thailand establish it to be a criminal offence having punishment by death or imprisonment or deprivation of liberty in other forms from one year upward, accordingly, whether it be the offence of the same chapter or designation under the law of both States.

The commission of other offences with punishment by imprisonment or deprivation of liberty in other forms less than one year may be the basis for requesting extradition if it relates to the offence for which the extradition has been granted whether the request has been made at the same time with the initial request or afterward.

Section 8 The extradition shall commence with the extradition request from the Requesting State.

The extradition request from the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels.

The extradition request together with documents and evidence shall be in accordance with rules, means and conditions prescribed in the Ministerial Regulation.

The extradition request together with documents and evidence under paragraph 3 to be referred to the Court shall be translated into Thai and also certified to be true.

The Court may, without necessity for the supplement of witness's testimony, admit the extradition request together with documents and evidence under this Section.

Section 9 The Thai government may consider surrendering a person for prosecution or serving punishment according to the Court's judgment in a criminal case under the Requesting State's jurisdiction to such State pursuant to the request as follows:

- (1) Where it is an extraditable offence and not prohibited by the Thai law or not the offence of political character or military offence;
- (2) Where there is no extradition treaty between them, when the Requesting State expresses definitely that the extradition will be granted in the same manner upon requested.

The offence of political character in sub-paragraph (1) does not include the followings:

- (1) Murdering, inflicting bodily injury or depriving liberty of the King, Queen or Heir Apparent;
- (2) Murdering, inflicting bodily injury or depriving liberty of Head of the State, government leader or immediate family members of such person;
- (3) Committing of offence not regarded as political offence for the purpose of extradition according to the treaty to which Thailand is a party.

Military offence means specific military criminal offence and not ordinary criminal offence.

Section 10 Where any person sought for extradition was used to be tried by the Thai Court or the Requesting State's Court for the same

conduct as that sought for extradition and the Thai Court or the Requesting State's Court has passed a final decision acquitting such person or convicting such person whose punishment has been served or pardon or amnesty is granted or the statute of limitations is lapsed or there arises any other causes barring the proceedings against such person under the law of the Requesting State, such person shall not be reextradited in respect of such conduct.

Section 11 Confinement for proceedings or punishment of the extradited person from the Requested State to Thailand in other offence committed prior to executing extradition and surrender of the extradited person from the Requested State to Thailand further to the third State cannot be carried out except for the following matters:

- (1) Such person has traveled out of the Kingdom of Thailand after completion of the extradition process and voluntarily returned to it;
- (2) Such person has not traveled out of the Kingdom of Thailand within 45 days after completion of the extradition process; or
- (3) The Requested State consents.

Chapter 2 Execution of Extradition Request

Part 1 General Provisions

Section 12 Execution of extradition request of a Thai national may be carried out in the following matters:

- (1) When it is provided for in the extradition treaty between Thailand and the Requesting State;
- (2) That person consents to the extradition; or
- (3) It is the extradition under the condition of reciprocity that Thailand concludes with the Requesting State.

Section 13 Where the extradition request is submitted through the diplomatic channels, the Ministry of Foreign Affairs shall consider doing the followings:

- (1) if it is of the opinion that the request will not affect the international relation and there is no other reason not to execute it, the request shall be submitted to the Central Authority for further action;
- (2) if it is of the opinion that the request may affect the international relation or there is other reason that the request may not be executed, the Ministry of Foreign Affairs shall speedily propose such opinion together with the request for consideration of the Cabinet. Where the Cabinet concurs with such opinion, it shall consider making direction as deemed appropriate. If the Cabinet concurs with execution of the extradition request, the Ministry of Foreign Affairs shall accordingly submit the matter to the Central Authority for further action under this Act.

Section 14 The Central Authority, upon receiving the extradition request from the Ministry of Foreign Affairs or the Requesting State, shall consider doing as follows:

(1) Where the Central Authority is of the opinion that the request is eligible for execution as stipulated under this Act, the Public Prosecutor shall be notified to petition the Court for issuing the arrest warrant then arrange for delivering the same to the Commissioner-General of the Royal Thai Police or other concerned authorities for further action;

(2) Where the request is not processed in accordance with the procedure or accompanied with improper documents and evidence or executable under certain necessary conditions, the Central Authority shall notify the Requesting State the problem or necessary condition. However, if the execution of the extradition request will affect the prosecution of any other cases or criminal proceedings against such person in Thailand, the Central Authority may defer carrying out or carry out the extradition request by imposing necessary conditions. The Requesting State shall accordingly be notified without delay.

(3) Where the request is not transmitted through the diplomatic channels, the Central Authority shall notify the same to the Ministry of Foreign Affairs for giving opinion before taking further action. The provision of Section 13 (2) shall accordingly be applied *mutatis mutandis*.

(4) Where the Central Authority is of the opinion that the request may affect the international relation or there exists any other reasons that it should not be executed or is not eligible for execution under this Act, the Requesting State or the Ministry of Foreign Affairs shall be so notified for further action as the case may be.

Section 15 Where there is an urgent necessity, the Requesting State may make a request for provisional arrest and detention of the person sought. Such a request of the Requesting State having an extradition treaty with Thailand shall be transmitted to the Central Authority. Where the Requesting State has no extradition treaty with Thailand, it shall be transmitted through the diplomatic channels.

The request in paragraph 1 shall be in accordance with the regulation stipulated by the Central Authority.

The provision of Section 14 shall be applied *mutatis mutandis* to consideration for the above execution.

Section 16 Upon arresting the person sought for extradition under the provision of Section 15, they shall, without delay, be brought to the Public Prosecutor for filing a petition with the Court to order detaining the person sought while awaiting a formal extradition request together with accompanying documents and evidence from the Requesting State.

Where the Court does not receive the accusation for the extradition proceedings within 60 days as from the day the person sought was arrested or within the time fixed by the Court but not exceeding 90 days as from the day such person was arrested, they shall be released.

Where the person sought is released under paragraph 2 due to the Requesting State not transmitting the formal extradition request together with necessary documents and evidence under Section 8 or any other reasons, the request for provisional arrest under Section 15 shall be repealed

and the Requesting State cannot make a request to rearrest the person sought on the same grounds. However, the refusal or repeal of such request for provisional arrest does not result in forbidding the Requesting State from normally requesting extradition of the person sought.

Section 17 Where it is deemed appropriate, the Ministry of Foreign Affairs may propose facts and opinion respecting international cooperation or relation to the Central Authority for supplementing consideration. The same, accordingly, shall also include consideration at the appellate stage.

Section 2

Extradition Proceedings

Section 18 Subject to Section 27, the Public Prosecutor, upon arresting the person sought for extradition, shall bring an action to the Court without delay.

The Court shall conduct the hearing continuously except it deems appropriate to defer the same as requested by the Public Prosecutor or the person sought for extradition. The Court shall accordingly order detaining such person pending the hearing.

The Criminal Procedure Code shall, *mutatis mutandis*, be applied to confinement of the person sought and conduct of the extradition proceedings not otherwise provided by this Act. Where there is a petition for a provisional release, the Court shall inquire whether the Public Prosecutor has any objection whatever. The Court, in case of having objection from the Public Prosecutor, should admit it for supplementing consideration.

The Court, prior to commence the hearing, shall inquire whether the person sought has a lawyer. Where such person has none and requires one, the Court shall appoint one for them and the Criminal Procedure Code shall be applied *mutatis mutandis*.

Section 19 The Court, on considering the evidence, is of the view that there exists the following matters, it shall order detaining such person for further surrender:

(1) The arrested person is the one whose extradition is sought and not a Thai national or a Thai national but extraditable under the rule in Section 12;

(2) The case is *prima facie* for accepting the accusation for consideration if such offense is committed inside the Kingdom or regarded by the law to be committed inside the Kingdom; and

(3) The offence sought for extradition is extraditable under this Act and not the one of political character or specifically military offence.

Where the Court considers that the evidence in paragraph 1 is not sufficient, it shall make an order of release and proceed with the release of such person at the end of 72 - hour time period from the reading of such order except that within such time period the Public Prosecutor notifies the intention to appeal, such person shall be detained pending the appeal, which shall be lodged within 30 – day period from the day the Court reading the order of

release. If the provisional release petition is lodged at the stage of appeal, the provision of Section 18 paragraph 3 shall be applied mutatis mutandis.

Section 20 The person against whom the Court makes an order of detention under Section 19 paragraph 1 shall be prohibited from surrender before completion of 30 – day period as from the day the Court making the final order of detention for surrender.

The Public Prosecutor, when there is a reasonable cause to defer surrendering the person against whom the court orders detention for surrender, shall submit a petition to the Court for considering making an order for further detaining such person according to the time period as necessary. Such petition shall be submitted before the completion of the 90 – day period as from the day the Court making the final order of detention for surrender.

Where such person is not surrendered within 90 days as from the day the Court making the final order or within the time period the Court permitting extension according to the petition of the Public Prosecutor under paragraph 2, they shall be released.

Section 3 Appeal

Section 21 After the First Instance Court has made an order releasing or detaining a person for surrender, the Public Prosecutor or the said person may lodge an appeal against the order to the Appeal Court within the time period of 30 days as from the day the Court reading such order.

The Appeal Court, in considering the appeal, shall determine the objection particularly on the cause requiring the Court to make the order as stipulated in Section 19 by considering whether the First Instance Court has made the order based on sufficient evidence.

The Appeal Court's decision shall be final.

Chapter 3 Surrendering Process

Section 22 After the Court has made the final order detaining the person sought for extradition and the Thai government has considered extraditing such person, the surrender of such person to the Requesting State shall be completed within 90 days as from the day the Court making the final order or within the time period the Court permitting the extension according to the Public Prosecutor's petition. In this respect, details as to the day, time, place and means of surrendering such person shall be as stipulated in the Ministerial Regulation.

Section 23 Where the Requesting State does not undertake to remove the person sought for extradition within the time period under Section 22 without reasonable cause, if it afterwards seeks the extradition of such person for the same offence, the extradition shall be refused.

The provision of Section 25 shall not be applicable to the refusal of extradition under paragraph 1.

Section 24 Where the person against whom the Court has made the final order of detention for extradition is being prosecuted or serving punishment according to the judgment in Thailand for other offence aside from the offence sought for extradition, the Thai government may take one of the following actions:

- (1) Surrendering such person to the Requesting State;
- (2) Deferring to surrender such person until completing the proceedings or until such person has served the punishment according to the judgment in whole or in part;
- (3) Surrendering provisionally such person to the Requesting State for prosecution according to conditions agreed with the Requesting State and after such person has been surrendered to Thailand, they may be surrendered to the Requesting State once again for serving punishment according to the judgment.

Section 25 Where there is no extradition to the Requesting State, the Central Authority shall consider notifying the competent authority for further taking criminal action against the person sought for extradition according to the Thai law.

Section 26 Except the Cabinet otherwise determines, the Central Authority, in case of receiving the extradition request of the same person regardless of the same or different offence, shall consider that extradition of such person should be granted to which Requesting State and under what condition or to such Requesting States before one or after another. The following matters accordingly shall be brought for comparing consideration to supplement exercising discretion:

- (1) The Requesting State has or does not have extradition treaty with Thailand;
- (2) The place of incident;
- (3) The gravity of offence having impact on the Requesting State and scale of punishment;
- (4) Sequence of request receiving from the Requesting State;
- (5) Nationality of the offender;
- (6) Interests and readiness of the proceedings;
- (7) Other reasons on international relations according to the opinion of the Ministry of Foreign Affairs.

The Requesting State, after the Central Authority has exercised the discretion in whatever manners, shall be notified and steps as stipulated in this Act shall be proceeded.

Section 27 After the person sought for extradition has been arrested, whether there be a request under this Act, the arresting competent authority shall inquire such person whether to consent to the extradition.

Where the person sought according to paragraph 1 expresses such consent, it shall be prepared in writing according to the form stipulated by the Central Authority. The Public Prosecutor shall then arrange for such person to be brought to the Court by filing a petition for examining such consent promptly. Where the Court is of the opinion that such person has

given consent voluntarily, it shall make an order detaining such person for extradition according to Section 22.

Consent given before the Court may not be revoked.

In the examination of the Court, if the person sought revokes his word expressed before the competent authority, it shall make an order detaining such person for carrying out the extradition proceedings further as provided in Chapter 2, Section 2.

Section 28 Where the extradition proceedings is pending hearing in any Court whatever if the person sought for extradition expresses to the Court the consent to surrender, it shall suspend the hearing and make the order detaining such person for surrender according to Section 22.

Consent given before the Court may not be revoked.

Chapter 4

Case of Thailand Request for Extradition

Section 29 Where Thailand requests extradition on the offence punishable with death according to the Thai law but not up to the punishment of death according to the law of the Requested State and it is of necessity for the Government to give assurances of non-execution, negotiation for the settlement on giving such assurances shall consequently be carried out. In this respect, the Government, if the Court gives a death sentence, shall proceed in accordance with the provision of law for the requirement of execution according to the judgment by means of life imprisonment in lieu of death. The reduction of such person's punishment shall not be granted in whatever grounds except for the pardon.

Section 30 The Public Prosecutor or the agency requiring extradition shall submit to the Central Authority the request for extradition from the Requested State to Thailand.

Where the Central Authority determines that it is appropriate for the extradition request be made to the Requested State, the matter shall be submitted to the Public Prosecutor for further making the extradition request and accompanying documents.

The extradition request according to paragraph 1 and accompanying documents shall be in accordance with the regulation as stipulated by the Central Authority.

The determination of the Central Authority in relation to the extradition request shall be held final except the Cabinet passes resolution otherwise.

The Central Authority shall request the extradition from the Requested State having no extradition treaty with Thailand through the diplomatic channels.

The Central Authority shall request the extradition from the Requested State having extradition treaty with Thailand in accordance with the treaty.

Section 31 The Public Prosecutor, in carrying out the duty according to Section 30, shall have power to search for facts and collect evidence, take statement of persons, make an order summoning any person to give statement to them and carry out other matters as deemed appropriate. Notification may also be made to competent authorities or other State official to carry out any matters for the benefit of extradition.

The order according to paragraph 1 shall be deemed a lawful requisition of the Public Prosecutor under the Penal Code.

Chapter 5

Expenses of Extradition Proceedings

Section 32 All expenses concerning the extradition to the Requesting State or the request for extradition to Thailand shall be in accordance with the rules, means and conditions as stipulated in the Ministerial Regulation.

Transitory Provisions

Section 33 All cases of extradition the Public Prosecutor has filed with the Court before or after the entering into force of this Act shall be proceeded according to the Extradition Act, B.E. 2472 until completion of the process.

Section 34 Where the Ministerial Regulation, rule or regulation under this Act has not yet been published or entered into force and in case it is necessary to carry out any matters of extradition, the procedure and provision of the Extradition Act, B.E. 2472 and the extradition treaty between Thailand and the Requesting State shall be applied

Counter-signature
General Surayud Chulanont
Prime Minister

Remarks : The reason for enforcing this Act is due to the long enforcement of Extradition Act, B.E. 2472 which is unsuitable to the present situation and unable to solving several practical problems resulting in the extradition cannot be carried out effectively coupled with at present the rules and means of operation have developed greatly making it reasonable for improving the said Act properly and effectively, it is thus essential to enact this Act.