

EXTRADITION ACT,

B.E. 2551 (2008)

BHUMIBOL ADULYADEJ, REX;

Given on the 30th Day of January B.E. 2551 (2008);

Being the 63rd Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on extradition;

This Act contains certain provisions in relation to the restriction of individual right and liberty of person, in respect of which section 29 in conjunction with section 32, section 33 and section 34 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act shall be called the “Extradition Act, B.E.2551 (2008).”

Section 2¹. This Act shall come into force after the expiration of one hundred and eighty days as from the date of its publication in the Government Gazette.

Section 3. The Extradition Act, B.E. 2472 (1929) shall be repealed.

Section 4. This Act shall apply to all extradition insofar as it is not contradictory to or inconsistent with the provisions of the treaties on extradition between the government of Thailand and the governments of foreign countries or international organizations.

Section 5. In this Act:

“Requesting State” means a country, territory or international organization that submits an extradition request to Thailand;

“Requested State” means a country, territory or international organization to which Thailand submits an extradition request;

“Central Authority” means the Attorney General, or the person designated by the Attorney General, who has the power and duty to coordinate an extradition to the Requesting State; a request for extradition by Thailand; and other related activities;

“Competent Authority” means a public prosecutor, corrections officer, administrative

¹ Government Gazette, Volume 125, Part 32 Kor, 11 February 2007, pp. 36-49.

official, police officer, or other competent official having, within their respective official capacity, the power and duty relating to extradition procedures as notified by the Central Authority.

Section 6. The Minister of Foreign Affairs and the Minister of Justice shall have charge and control of the execution of this Act and shall have the power to issue the Ministerial Regulations for the execution of this Act in relation to their respective powers and duties.

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Chapter I

General Provisions on Extradition

Section 7. An extraditable offence must be a criminal offence which is punishable by death, imprisonment or other form of deprivation of liberty for a period of at least one year under both the laws of the Requesting State and the laws of Thailand, regardless of whether these laws place the offence within the same category or denominate it by the same terminology.

Any other offence which is punishable by imprisonment, or deprivation of liberty in other forms for a period of less than one year may be subject to extradition if it relates to the extraditable offence for which the extradition has been granted, irrespective of whether the request was made at the same time as the initial request or afterwards.

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

An extradition request from a Requesting State which has 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 diplomatic channels.

An extradition request together with supporting documentation shall be in accordance with the rules, procedures and conditions prescribed by the Ministerial Regulations.

An extradition request together with supporting documentation under paragraph three to be submitted to the Court shall be accompanied by a certified translation into Thai.

The Court may admit the extradition request together with supporting documentation under this section without the need for additional testimony by witnesses.

Section 9. The government of Thailand may consider extraditing the person specified by the Requesting State to be prosecuted or serve a sentence for a criminal offence under its jurisdiction when:

- (1) such an offence is extraditable and is not subject to prohibitions on extradition under

the Thai law, or is not an offence of a political nature or a military offence; and

(2) the Requesting State, in the absence of an extradition treaty, has expressly indicated that an extradition would be granted reciprocally upon request.

An offence of a political nature under paragraph one does not include:

(1) the murder of, the infliction of bodily harm on, or the deprivation of liberty of the King, Queen or Heir Apparent;

(2) the murder of, the infliction of bodily harm on, or the deprivation of liberty of the Head of State, government leader or immediate family members of such a person;

(3) an offence not considered as a political offence for the purpose of extradition according to a treaty to which Thailand is a party.

A military offence means a criminal offence exclusively under military law and not an offence under ordinary criminal law.

Section 10. A person sought for extradition who has been tried by the Thai Court or a Court in the Requesting State for the identical offence for which the extradition is requested and has been acquitted by the Court; or who has been convicted and served the full sentence; or who has been granted a pardon or amnesty; or against whom prosecution is barred by prescription or any other grounds under the law of the Requesting State, shall not be re-extradited for such an offence.

Section 11. A person who has been extradited from the Requested State to Thailand shall not be detained for the purpose of prosecution of or punishment for any other offence committed prior to the extradition, nor shall be referred to a third State, unless:

(1) such a person departed the Kingdom of Thailand after the completion of the extradition process, and has made a voluntary reentry thereto;

(2) such a person failed to leave the Kingdom of Thailand within forty-five days of the completion of the extradition process; or

(3) the Requested State consents to this.

Chapter II

Procedures for Handling an Extradition Request

Part 1

General Provisions

Section 12. The extradition of a Thai national may be granted in cases where:

- (1) a treaty between Thailand and the Requesting State provides for such extradition;
- (2) such a person consents to the extradition; or
- (3) the extradition is under the conditions of reciprocity between Thailand and the Requesting State.

Section 13. Where the extradition request is submitted through diplomatic channels, the Ministry of Foreign Affairs shall proceed as follows:

(1) If the Ministry of Foreign Affairs considers that the request will not affect international relations and there is no other reason not to proceed, it shall refer the request to the Central Authority for further action.

(2) If the Ministry of Foreign Affairs considers that the request may affect international relations or there are other reasons not to proceed, it shall submit such an opinion together with the request to the Council of Ministers for its consideration. If the Council of Ministers concurs with the aforesaid opinion, it shall issue an order as deemed appropriate, but if the Council of Ministers concurs with the implementation of the extradition request, the Ministry of Foreign Affairs shall refer it 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 proceed as follows:

(1) Where the Central Authority considers that the request complies with the requirements as stipulated under this Act, the public prosecutor shall be asked to petition the Court to issue an arrest warrant which shall then be forwarded to the Commissioner-General of the Royal Thai Police or other concerned authority for further action.

(2) Where the request does not comply with the relevant procedures; or is not accompanied by the correct supporting documentation; or where implementation of the request is subject to specific conditions, the Central Authority shall inform the Requesting State of such an impediment or conditions. If the implementation of the extradition request will affect the prosecution of any pending case, or any other ongoing criminal proceedings in Thailand against the person sought, the Central Authority may defer the implementation of the request or may proceed with the request subject to specific conditions and shall inform the Requesting State of this without delay.

(3) Where the request is not transmitted through diplomatic channels, the Central

Authority shall refer the request to the Ministry of Foreign Affairs for comment before taking further action, and the provisions of section 13 (2) shall be applied *mutatis mutandis*.

(4) Where the Central Authority considers that the request may affect international relations; or should not proceed for any other reason; or is ineligible under this Act, the Central Authority shall inform the Requesting State or notify the Ministry of Foreign Affairs as the case may be for further action.

Section 15. In case of urgency, the Requesting State may request the provisional arrest and temporary detention of the person sought. Such a request from a Requesting State which has 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 diplomatic channels.

The request as in paragraph one shall be in accordance with the regulations stipulated by the Central Authority.

In considering the implementation of the above, the provisions of section 14 shall be applied *mutatis mutandis*.

Section 16. Upon the arrest of the person sought for extradition under the provisions of section 15, they shall be brought without delay before the public prosecutor, who shall apply for a Court detention order for the person sought pending the formal extradition request accompanied by supporting documentation from the Requesting State.

Where the Court does not receive the indictment for the extradition proceedings within sixty days, or other period of time specified by the Court but not exceeding ninety days as from the day the person sought was arrested, the person sought shall be released.

Where the person sought is released under paragraph two due to the Requesting State's failure to transmit the formal extradition request together with supporting documentation as under section 8, or for any other reason, the request for provisional arrest under section 15 shall be terminated and the Requesting State shall be unable to make a request to re-arrest the person sought on the same grounds. However, the refusal or termination of such a request for provisional arrest shall not prevent the Requesting State from making a formal request for extradition.

Section 17. Where deemed appropriate, the Ministry of Foreign Affairs may submit facts and opinions on international cooperation or international relations to the Central Authority prior to being submitted to the Court for its further consideration. The Court shall have the power to order the Ministry of Foreign Affairs to explain the matters. This provision shall also apply to consideration in the appellate stage.

Part 2

Extradition Proceedings

Section 18. Subject to section 27, the public prosecutor, upon the arrest of the person sought for extradition, shall bring the case to the Court without delay.

The Court shall conduct a continuous hearing unless it deems it appropriate to adjourn the case on the application of either the public prosecutor or the person sought in the extradition. In this respect, the Court shall order the detention of the person sought pending the hearing.

Unless otherwise provided for by this Act, the Criminal Procedure Code shall be applied *mutatis mutandis* to the detention of the person sought and the extradition proceedings. Where there is a petition for provisional release, the Court shall ask whether or not the public prosecutor has any objections. In the case of an objection being raised by the public prosecutor, the Court may take it into consideration.

The Court, before commencing the hearing, shall ascertain whether the person sought has a legal counsel. If the person sought has no legal counsel but requires one, the Court shall appoint a legal counsel for the person sought and the Criminal Procedure Code shall be applied *mutatis mutandis*.

Section 19. The Court shall order the detention of the person sought for extradition if, on considering the evidence, the following grounds are found to exist:

(1) The arrested person is the person sought for extradition; and is not a Thai national or, in the case of being a Thai national, is extraditable under section 12;

(2) A *prima facie* case would be established if the offence was committed in Thailand or can be deemed by law to have been done so; and

(3) The offence constituting the grounds for extradition is an extraditable offence under this Act and is neither of a political nature, nor an exclusively military offence.

If the Court finds that the evidence in paragraph one is insufficient, it shall issue an order of release and the person sought shall be released upon the expiration of 72 hours after the pronouncement of the order. However, if within the aforesaid time the public prosecutor informs the Court of the intention to file an appeal within 30 days of the date on which the order of release was pronounced, the person sought shall be detained during the appeal. If an application for provisional release is filed during the appeal, the provisions of section 18 paragraph three shall be applied *mutatis mutandis*.

Section 20. The person against whom the Court issues an order of detention under section 19 paragraph one shall not be surrendered before the expiry of a 30-day period as from the date on which the Court ordered the detention for extradition.

Where there are reasonable grounds to defer the surrender of a person sought who the Court has ordered to be detained for extradition, the public prosecutor shall make an application to the Court to further detain the person sought as necessary. Submission of such an application shall be made within a period of 90 days as from the date on which the Court issued the final detention order for extradition.

If the person sought has not been surrendered within 90 days of the date on which the Court issued the final detention order, or within the extended time period granted by the Court as requested by the public prosecutor under paragraph two, the person sought shall be released.

Part 3

Appeal

Section 21. After the Court of First Instance has issued an order to either release the person sought or detain the person sought for extradition, the public prosecutor or the person sought may lodge an appeal against the order with the Court of Appeal within 30 days of the order being pronounced.

The Court of Appeal, in considering the appeal, shall consider only the grounds upon which the Court was required to make the order as stipulated in section 19 and whether or not the order issued by the Court of First Instance was based on sufficient evidence.

The decision of the Court of Appeal shall be final.

Chapter III

Surrender Procedures

Section 22. After the Court has issued the final order to detain the person sought for extradition and the government of Thailand has determined to extradite the person sought, the surrender of the person sought to the Requesting State shall be completed within 90 days of the date on which the final order was made, or within the extended time period permitted by the Court in accordance with the public prosecutor's petition. Details of the date, time, place and procedures for surrendering the person sought shall be in accordance with the Ministerial Regulations.

Section 23. When the Requesting State fails, without a reasonable cause, to take charge of the person sought for extradition within the time period specified under section 22 and subsequently requests the extradition of the person sought for the same offence, the request shall be refused.

The provisions of section 25 shall not be applicable to the refusal of extradition under paragraph one.

Section 24. If the Court has issued the final order to detain for extradition a person involved in criminal proceedings, or who is serving a sentence in Thailand for an offence other than the offence for which the extradition is sought, the government of Thailand may take one of the following actions:

- (1) Surrender the person to the Requesting State; or
- (2) Defer the surrender of the person until the criminal proceedings are concluded or until the person sought has served the sentence in part or in whole; or
- (3) Temporarily surrender the person to the Requesting State for prosecution subject to the conditions as agreed with the Requesting State; and after the person has been returned to Thailand, the person may then be surrendered again to the Requesting State to serve the sentence.

Section 25. When extradition to the Requesting State is denied, the Central Authority shall consider notifying the Competent Authority to initiate a criminal action under Thai law against the person sought for extradition.

Section 26. Unless the Council of Ministers deems otherwise, where two or more states request the extradition of the same person sought for either the identical or a different offence, the Central Authority shall decide to which Requesting State the extradition should be granted and under what conditions or in which sequence. In this respect, the Central Authority, in exercising its discretion, shall take into consideration the following matters:

- (1) The existence of an extradition treaty between the Requesting State(s) and Thailand;
- (2) The place in which the offence was committed;
- (3) The gravity of the offence impacting upon the Requesting State and the scale of punishment;
- (4) The sequence in which the requests from the Requesting States were received;
- (5) The nationality of the person sought;
- (6) The Requesting States' respective interests and readiness to initiate proceedings;
- (7) Other reasons appertaining to international relations in accordance with the opinion of the Ministry of Foreign Affairs.

The Central Authority, having exercised its discretion, shall notify the Requesting States of its decision and shall proceed in accordance with the procedures stipulated in this Act

Section 27. After the person sought for extradition has been arrested, regardless of whether an extradition request has been made under this Act, the Competent Authority making the arrest shall enquire whether the person sought consents to be extradited.

If the person sought under paragraph one has expressed consent, it shall be made in writing in the format stipulated by the Central Authority. The public prosecutor shall proceed with arrangements for the person sought to be brought to the Court and file an application to the Court for scrutinizing the consent without delay. Where the Court finds that the person sought has consented voluntarily, it shall order the detention of the person sought for extradition under section 22.

Consent given before the Court shall not be revoked.

If, in the course of examination by the Court, the person sought revokes the consent given to the Competent Authority, the Court shall make an order detaining the person sought for extradition proceedings as under Chapter II, Part 2.

Section 28. If extradition proceedings are pending in any Court and the person sought has consented to be extradited, the Court shall order a stay of the proceedings and order the detention of the person sought for subsequent extradition under section 22.

Consent given before the Court shall not be revoked.

Chapter IV

Request for Extradition to Thailand

Section 29. Where Thailand makes an extradition request for an offence which is punishable by death under Thai law but not under the law of the Requested State and the government of Thailand is required to give assurances that capital punishment shall not be enforced, the government of Thailand shall proceed with the negotiations and provide such assurances. In this respect, if the Court imposes capital punishment, the government of Thailand shall proceed in accordance with the law to enforce the sentence as life imprisonment in lieu of capital punishment. No sentence reduction shall be granted to such a person on any grounds whatsoever, except through the granting of a pardon.

Section 30. In making a request for extradition from the Requested State to Thailand, the public prosecutor, or the agency seeking the extradition, shall submit the matter to the Central Authority.

Where the Central Authority decides that it is appropriate to request extradition from the Requested State, the Central Authority shall submit the matter to the public prosecutor for the preparation of the extradition request and supporting documents.

The extradition request under paragraph one and supporting documents shall be in

accordance with the rules prescribed by the Central Authority.

The decision of the Central Authority in relation to the extradition request shall be final, except where the Council of Ministers passes a resolution to the contrary.

A request for extradition from a Requested State which has no extradition treaty with Thailand shall be made by the Central Authority through diplomatic channels.

A request for extradition from a Requested State which has an extradition treaty with Thailand shall be made by the Central Authority in accordance with the treaty.

Section 31. In the implementation of section 30, the public prosecutor shall have the authority to ascertain the facts; to collect evidence; to examine witnesses; to summons any person to make a statement before the public prosecutor; to carry out other acts as deemed appropriate; and to request competent officials or other State officials to carry out any acts in the interest of the extradition.

The summons under paragraph one shall be deemed as a lawful requisition of the public prosecutor under the Penal Code.

Chapter V

Expenses of Extradition Proceedings

Section 32. All expenses incurred in an extradition to a Requesting State, or in a request for extradition to Thailand, shall be in accordance with the rules, procedures and conditions prescribed by the Ministerial Regulations.

Transitory Provisions

Section 33. All cases of extradition filed by a public prosecutor with the Court before or on the date this Act come into force shall be completed under the Extradition Act, B.E. 2472 (1929).

Section 34. Where the Ministerial Regulations, rules or regulations under this Act have yet to be published or to have entered into force and an extradition has to be implemented, the procedures and provisions of the Extradition Act, B.E. 2472 (1929) and the extradition treaties between Thailand and the Requesting State shall be applied.

Countersigned

General Surayud Chulanont

Prime Minister

Remarks: The reasons for promulgating this Act are as follows. The Extradition Act, B.E. 2472 (1929) has been in force for a long period of time, during which some provisions have become inappropriate for current circumstances and impractical in various respects, resulting in inefficient extradition procedures. Additionally, international standards and procedures for extradition have changed drastically in recent years, making it desirable to revise the said Act in order that the law shall continue to function effectively and efficiently. Therefore, it has been deemed essential to promulgate this Act.