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1998B00379



Extradition (Republic of Paraguay) Regulations 1998

Statutory Rules 1998 No. 1

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations under the *Extradition Act 1988*.

Dated 7 DEC 1998 1998.

WILLIAM DEANE
 Governor-General

By His Excellency's Command,

AMANDA VANSTONE
 Minister for Justice and Customs



Extradition (Republic of Paraguay) Regulations 1998

Statutory Rules 1998 No. 1¹

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made under the

Extradition Act 1988

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1998, 1

Extradition (Republic of Paraguay) Regulations 1998

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1 Name of regulations

These regulations are the *Extradition (Republic of Paraguay) Regulations 1998*.

2 Commencement

These regulations commence on 30 May 1999.

3 Declaration of Republic of Paraguay as an extradition country

The Republic of Paraguay is declared to be an extradition country.

4 Application of Act

The *Extradition Act 1988* applies to the Republic of Paraguay subject to the Treaty on Extradition between Australia and the Republic of Paraguay (a copy of which is set out in Schedule 1).

Schedule 1 Treaty on Extradition between Australia and the Republic of Paraguay

(regulation 4)

TREATY ON EXTRADITION BETWEEN AUSTRALIA AND THE REPUBLIC OF PARAGUAY

AUSTRALIA AND THE REPUBLIC OF PARAGUAY, (hereinafter
called the “Contracting States”)

DESIRING to make more effective the co-operation of the two countries
in the suppression of crime by concluding a Treaty on Extradition of
persons wanted for prosecution or persons wanted for the imposition or
enforcement of a sentence imposed by the Requesting State for the
commission of crimes,

HAVE AGREED as follows:

Article 1 Obligation to extradite

Each Contracting State agrees to extradite to the other, in accordance
with the provisions of this Treaty, any persons who are wanted for
prosecution or for the imposition or enforcement of a sentence in the
Requesting State for an extraditable offence.

Article 2 Extraditable offences

1. For the purposes of this Treaty, extraditable offences are offences
which are punishable under the laws of both Contracting States by
imprisonment for a period of at least two years. Where the request for
extradition relates to a person convicted of such an offence who is
wanted for the enforcement of a sentence of imprisonment, extradition
shall be granted only if a period of at least six months of such penalty
remains to be served.

2. For the purpose of this Article in determining whether an offence is a punishable offence according to the laws of both Contracting States:

- (a) it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
- (b) the totality of the acts or omissions alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Contracting States, the constituent elements of the offence differ.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matter, extradition may not be refused on the ground that the law of the Requested State 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 State.

4. Where the offence has been committed outside the territory of the Requesting State, extradition shall be granted where the law of the Requested State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested State does not so provide the Requested State may, in its discretion, grant extradition.

5. Extradition may be granted pursuant to the provisions of this Treaty irrespective of when the offence in relation to which extradition is sought was committed, provided that:

- (a) it was described as an offence under the law of the Requesting State at the time of the acts or omissions constituting the offence; and
- (b) it was an offence in both Contracting States at the time the request for extradition was made.

Article 3
Exceptions to extradition

1. Extradition shall not be granted in any of the following circumstances:

- (a) if the offence for which extradition is sought is a political offence, or is related to such an offence. Reference to a political offence shall not include the taking or attempted taking of the life of a Head of State or a member of his or her family nor an offence against the law relating to genocide;
- (b) if there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
- (c) if the offence for which extradition is sought is an offence exclusively under military law, which is not punishable under the ordinary criminal law of the Contracting States. If the requested person is accused of an offence against military law which is also punishable under ordinary law, the extradition shall be granted with the proviso that the accused person shall be tried only under ordinary law and by ordinary courts;
- (d) if the person whose extradition is sought is undergoing prosecution, or has been tried and acquitted or punished by the Requested State or by a third state for the offence for commission of which the extradition is sought;
- (e) if the person whose extradition is sought has, according to the law of either Contracting State, become immune from prosecution or punishment by reason of pardon, amnesty or subsequent, more favourable laws;
- (f) if the person whose extradition is sought has been tried or sentenced or is to be tried by an extraordinary or ad hoc tribunal or court of the Requesting State; or
- (g) if the proceedings or punishment have become barred by reason of lapse of time according to the laws of either Contracting State, prior to the request for extradition.

2. Extradition may be refused in any of the following circumstances:

- (a) if the person whose extradition is sought is a national of the Requested State. Where the Requested State refuses to extradite a national it shall, if the Requesting State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken.

Nationality shall be determined at the time of the commission of the offence for which extradition is requested;

- (b) if the competent authorities of the Requested State had decided, before the request for extradition was received, to refrain from prosecuting the person for the offence in respect of which extradition is sought;
- (c) if the offence for which extradition is sought carries the death penalty under the law of the Requesting State unless that State conveys, through the diplomatic channel, its assurance that the death penalty will not be imposed upon the requested person or, if imposed, will not be carried out;
- (d) if the offence for which extradition is sought is regarded under the law of the Requested State as having been committed in whole or in part within that State;
- (e) if prosecution in respect of the offence for which extradition is sought is pending in the Requested State against the person whose extradition is sought;
- (f) if the offence in respect of which extradition is requested is an offence which carries a punishment of the kind referred to in Article 7 of the International Covenant on Civil and Political Rights (adopted by the United Nations General Assembly on 16 December 1966);

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- (g) if the Requested State, while also taking into account the nature of the offence and the interests of the Requesting State, considers that by reason of the age, health or other personal circumstances of the person whose extradition is sought, the extradition of that person would be unjust, oppressive, incompatible with humanitarian considerations or too severe a punishment; or
 - (h) if the person whose extradition is sought has not received or may not receive from the Requesting State the basic guarantees required for criminal proceedings under Article 14 of the International Covenant on Civil and Political Rights.

3. This Article shall not affect any obligations which have been or shall in the future be assumed by the Contracting States under any multilateral Convention.

Article 4 Postponement of extradition

1. When the person whose extradition is sought is being, or will be, prosecuted, or is serving a sentence in the Requested State for an offence other than that for which extradition is sought, the Requested State may postpone surrender of the person until that person is available to be surrendered in accordance with the law of that State.

2. When the health or other personal circumstances of the person are such as would make surrender dangerous to the life of the person or incompatible with humanitarian considerations, the Requested State may postpone surrender until it no longer poses a danger to life or is incompatible with humanitarian considerations.

3. Where the Requested State postpones the surrender of a person sought pursuant to this Article, it shall advise the Requesting State accordingly.

Article 5 Extradition procedure and required documents

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.

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2. The request for extradition shall be accompanied:
- (a) if the person sought has been convicted of an offence, by such documents as provide evidence of the conviction and of the sentence imposed, the fact that the sentence is immediately enforceable, and the extent to which the sentence has not been carried out;
 - (b) if the person sought has been convicted of an offence but no sentence has been imposed, by such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;
 - (c) if the person sought has not yet been convicted, by a warrant for the arrest of the person or a legal document authorising that the person sought be taken into custody, or a copy thereof, issued by a competent authority of the Requesting State;
 - (d) in all cases, by the legal description of each offence for which extradition is sought, a statement of the acts or omissions which are alleged against the person in respect of each offence, the text of the relevant provisions of the law, if any, creating the offence or a statement of the relevant law as to the offence including any law relating to the limitation of proceedings, and a statement of the punishment that can be imposed for the offence; and
 - (e) in all cases, by as accurate a description as possible of the person sought together with any other information which may help to establish that person's identity and nationality.
3. To the extent permitted by the law of the Requested State, extradition may be granted of a person pursuant to the provisions of this Treaty notwithstanding that the requirements of paragraph 1 and paragraph 2 of this Article have not been complied with provided that the person sought consents to extradition.
4. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the Requested State.

Article 6
Authentication of supporting documents

1. A document that, in accordance with Article 5, accompanies a request for extradition shall be admitted in evidence provided that it is duly authenticated.
2. A document is duly authenticated for the purposes of this Treaty if it purports to be signed or certified by a competent Judge, Magistrate or other judicial officer in or of the Requesting State and purports to be sealed with an official or public seal of the Requesting State.

Article 7
Provisional arrest

1. In case of urgency the Requesting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL), or through the diplomatic channel, for the provisional arrest of the person sought pending the presentation of the request for extradition. The application for provisional arrest may be transmitted by any means affording a record in writing.
2. The application shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 5 authorising the apprehension of the person, a statement of the punishment that can be imposed or has been imposed for the offence, indicating any term still to be served and, if requested by the Requested State, a concise statement of the acts or omissions alleged to constitute the offence.
3. On receipt of such an application the Requested State shall take the necessary steps to secure the arrest of the person claimed and the Requesting State shall be promptly notified of the result of its request. The Contracting States shall indemnify each other in respect of any damages judicially awarded as a result of a person being provisionally arrested without just cause.
4. A person arrested upon such an application may be set at liberty upon the expiration of 60 days from the date of his arrest if a request for his extradition, supported by the documents specified in Article 5 and conveyed through the diplomatic channel, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request and the relevant supporting documents are subsequently received.

Article 8
Additional information

1. If the Requested State 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 State may request that additional information be furnished within 45 days.

2. If the person whose extradition is sought is under arrest and the additional information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be discharged. Such discharge shall not preclude the Requesting State from making a fresh request for the extradition of the person.

3. Where the person is discharged in accordance with paragraph 2 of this Article, the Requested State shall notify the Requesting State forthwith.

Article 9
Conflicting requests

1. Where requests are received from two or more States for the extradition of the same person, in relation to the same offence or to different offences, the Requested State shall determine to which of those States the person is to be extradited and shall notify the Requesting States of its decision.

2. In determining to which State a person is to be extradited, the Requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) if the requests relate to different offences — the relative seriousness of the offences;
- (b) the time and place of commission of each offence;
- (c) the respective dates of the requests;
- (d) the nationality of the person;

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- (e) the ordinary place of residence of the person; and
 - (f) the existence of a treaty on extradition.

Article 10
Surrender

1. The Requested State shall, as soon as a decision on the request for extradition has been made in accordance with the law of that State, communicate that decision to the Requesting State through the diplomatic channel. Reasons shall be given for any total or partial refusal.

2. Where extradition is granted, the Requested State shall surrender the person from a point of departure in its territory convenient to the Requesting State.

3. The Requesting State shall remove the person from the territory of the Requested State within 45 days from the date on which the person was placed at the disposal of the Requesting State and, if the person is not removed within that period, the Requested State may refuse to extradite the person for the same offence.

4. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other Contracting State. The two Contracting States shall mutually decide upon a new date of surrender, and the provisions of paragraph 3 of this Article shall apply.

Article 11
Surrender of property

1. To the extent permitted under the law of the Requested State and subject to the rights of third parties, which shall be duly respected, all property found in the Requested State that has been acquired as a result of the offence or may be required as evidence shall, if the Requesting State so requests, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the abovementioned property shall, if the Requesting State so requests, be surrendered to the Requesting State even if the extradition cannot be carried out owing to the death or escape of the person sought.

3. Where the law of the Requested State or the rights of third parties so require, any articles so surrendered shall be returned to the Requested State free of charge if that State so requests.

Article 12
Rule of speciality

A person extradited under this Treaty shall not be detained, tried or punished in the territory of the Requesting State for an offence committed prior to the date of the request for extradition, other than the offence for which extradition was granted, unless:

- (a) that person leaves the territory of the Requesting State after extradition and voluntarily returns to it;
- (b) that person does not leave the territory of the Requesting State within 30 days of being free to do so; or
- (c) the Requested State so consents. In such case, a request for consent shall be submitted, attaching the documents mentioned in Article 5 and a record of any statement made by the person extradited in relation to the offence in question. Consent may be given where the offence in respect of which it is requested is extraditable in accordance with the provisions of this Treaty.

This Article shall not apply to offences committed after the extradition.

Article 13
Surrender to a third state

1. Where a person has been surrendered to the Requesting State by the Requested State, the first-mentioned State shall not surrender that person to any third state for an offence committed before his surrender unless:

- (a) the Requested State consents to that surrender;
- (b) the person leaves the territory of the Requesting State after extradition and voluntarily returns to it; or
- (c) the person does not leave the territory of the Requesting State within 30 days of being free to do so.

2. Before acceding to a request pursuant to sub-paragraph (1)(a) of this Article, the Requested State may request the production of the documents mentioned in Article 5 of this Treaty.

Article 14 Transit

1. Where a person is to be extradited to a Contracting State from a third state through the territory of the other Contracting State, the Contracting State to which the person is to be extradited shall request the other Contracting State, through the diplomatic channel, to permit the transit of that person through its territory. Such request shall be accompanied with the document authorising the extradition or copy thereof.

2. Upon receipt of such a request the Requested Contracting State shall permit the transit, unless it is satisfied that there are reasonable grounds for refusing to do so, or reasons of public order that are opposed to such transit.

3. Permission for the transit of a person shall, subject to the law of the Requested Contracting State, include permission for the person to be held in custody during transit.

4. Where a person is being held in custody pursuant to the provisions of paragraph 3 of this Article, the Contracting State in whose territory the person is being held may direct that the person be released if his transportation is not continued within 20 days or within such further period as is considered reasonable by that Contracting State in all the circumstances of the case.

5. The Contracting State to which the person is being extradited shall reimburse the other Contracting State for any expense incurred by that other Contracting State in connection with the transit.

Article 15 Expenses

1. The Requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition and shall otherwise represent the interest of the Requesting State.

2. The Requested State shall bear the expenses incurred in the arrest of the person whose extradition is sought, and in the maintenance in custody of the person until he is surrendered to a person nominated by the Requesting State.

3. The Requesting State shall bear the expenses incurred in conveying the person from the territory of the Requested State.

Article 16
Entry into force and termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been complied with.

2. This Treaty shall apply to any request made after its entry into force, whatever the date of the commission of the offence.

3. On the entry into force of this Treaty, the Treaty between Great Britain and Paraguay for the Extradition of Criminals done at Asunción on 12 September 1908, shall cease to be in force between Australia and Paraguay.

4. Either Contracting State may terminate this Treaty by notifying the other in writing. Such termination shall enter into force six months after the day on which the other Contracting State receives such notice.

DONE at Buenos Aires on the Thirtieth day of December, One Thousand Nine Hundred and Ninety-Seven in English and Spanish, each text being equally authentic.

FOR AUSTRALIA:

FOR THE REPUBLIC OF
PARAGUAY:

W. Weemaes

Oscar Facundo Ynsfran

Note

1. Made by the Governor-General on 1998, and notified in 17 December
the *Commonwealth of Australia Gazette* on 1998. 22 December
Administered by the Minister for Justice and Customs.