

Extradition Act, B.E. 2551 (2008)

Translation

BY THE KING'S MOST EXCELLENT MAJESTY
Given on the 30th day of January, B.E. 2551
Being the 63rd year of the Present Reign

Whereas it is deemed expedient to revise the extradition law

This act contains some provisions relating to the restrictions of right and freedom of a person. It is permitted under the Section 29, Section 32, Section 33 and Section 34 of the Constitution of the Kingdom of Thailand by virtue of the provisions of law.

According to the advice and agreement of the parliament, it is hereby enacted as follows:

Section 1

This Act shall be called the "Extradition Act, B.E. 2551 (2008)"

Section 2

This Act shall come into force after 180 days from its publication in the Government Gazette.

Section 3

Extradition Act, B.E. 2472, shall be revoked.

Section 4

This Act shall be applicable to all extradition proceedings so far as it is not inconsistent with the terms of any extradition treaty between the Government of Thailand and foreign government or international organization.

Section 5

In this Act:

"Requesting State" means the state or international organization requesting extradition from Thailand.

"Requested State" means the state or international organization which Thailand requests extradition.

"Central Authority" means the attorney-general or person assigned by the attorney-general to be the coordinator in providing extradition to Requesting State or in requesting extradition for Thailand, and other relevant matters.

"Competent Authorities" means the public prosecutor, penitentiary officer, administrative officer, police officer, or official having authority and function to execute the request for extradition as notified by the Central Authority.

Section 6

The Minister of Foreign Affairs and the Minister of Justice shall act under this Act and shall have an authority to issue the Ministerial Regulations with respect to their powers and responsibilities.

The Ministerial Regulations shall come into force upon its publication in the Government Gazette.

CHAPTER 1

General Extradition Principles

Section 7

An extraditable offense shall be criminal and punishable under the laws of Requesting State and Thailand by death penalty, imprisonment, deprivation of liberty, or other detention forms for a period of more than one year, to an offense of the same Chapter or same offense in both states.

Other criminal offense punishable by imprisonment, deprivation of liberty or other detention forms less than one year shall also be an extraditable, if it is an extraditable offense as requested, whether it is requested for the first time or subsequently requested.

Section 8

Extradition proceedings shall commence with a request from Requesting State.

The state having extradition treaty with Thailand shall submit its request for extradition to the Central Authority. The state that has no such treaty shall submit its request through diplomatic channel.

A request for extradition and supporting documents shall conform to the regulations, means and conditions prescribed by the Ministerial Regulations.

A request for extradition and supporting documents described in paragraph 3 to be submitted to the court shall be translated into Thai and its correctness shall be certified.

A request for extradition or supporting documents under this Chapter shall also be submitted to the court without witnesses.

Section 9

The Government of Thailand may consider the extradition for legal proceedings or conviction according to the judgment in criminal offense within the jurisdiction of Requesting State as requested in the following cases:

- (1) If it is an extraditable offense and it is not forbidden under Thai law or it is not the military or political offense.
- (2) If there exists no mutual treaty and the Requesting State commits to assist Thailand in the similar manner when requested.

The political offense described in paragraph 1 does not include the following offense :

- (1) Assassination, attack or liberty deprivation of the king, queen or heir to the throne.
- (2) Assassination, physical attack or liberty deprivation of chief of the state, government leader or his/her family member.
- (3) Offense which is not considered to be a political offense for extradition purpose under Treaty which Thailand is a contracting party.

Military offense means an exclusive military offense, not criminal offense in general.

Section 10

If a person whom the extradition is requested has previously been judged by the court of Thailand or the court of Requesting State in the same act, and according to the final judgment, the person has been released or convicted and the person has been out of penalty or has received a general pardon or amnesty, or the prescription in law has been expired, or under any circumstances, the person has not been charged by the law of Requesting State, the person shall not be extradited from such act again.

Section 11

A person extradited may not be detained, tried, or punished in the Requesting State except for any offense for which extradition was granted, nor be extradited by that State to a third state, unless:

- (1) that person has left the territory of the Requesting State after extradition and has voluntarily returned to it.
- (2) that person has not left the territory of the Requesting State within 45 days after being free to do so, or
- (3) the Requested State has agreed.

CHAPTER 2

Initiating Proceedings upon Request

Part 1

General Provisions

Section 12

Extradition proceedings to send a Thai national shall be done in any of the following cases:

- (1) When there is an extradition treaty between Thailand and Requesting State.
- (2) The person agrees to the extradition, or
- (3) It is an extradition under reciprocal conditions entered between Thailand and Requesting State.

Section 13

If the request for extradition is submitted through the diplomatic channel, the Ministry of Foreign Affairs shall take the following procedures:

- (1) If it is considered that the request does not affect an international relation and there is no obstacle, the request shall be submitted to the Central Authority for further proceedings.
- (2) If it is considered that the request may affect an international relation and there is an obstacle, the Ministry of Foreign Affairs shall submit the request with opinion to the cabinet for earliest consideration. In the event that the cabinet approves the opinion given by the Ministry of Foreign Affairs, it shall be considered as deemed appropriate. If the cabinet approves the extradition proceedings, the Ministry of Foreign Affairs shall submit the matter to the Central Authority for further proceedings under this Act.

Section 14

Upon the receipt of extradition request from the Ministry of Foreign Affairs or from Requesting State, the Central Authority shall take the following procedures:

- (1) If it is considered that the request is subject to the provisions of this Act, the Central Authority shall notify the public prosecutor to submit the request to the court for issuing the warrant of arrest and delivering the warrant of arrest to the Commissioner of Royal Thai Police or other relevant officers for further proceedings.
- (2) If the request does not conform to the procedures, or the documents are not correct, or the request may be proceeded under some necessary conditions, the Central Authority shall notify the Requesting State of the reasons or conditions,

however, if the request for extradition affects other cases or criminal proceedings which the person is being charged in Thailand, the Central Authority may postpone the extradition proceedings or may proceed with the request under some conditions provided that the Requesting State shall be notified without delay.

- (3) If the request is not submitted through diplomatic channel, the Central Authority shall notify the Ministry of Foreign Affairs of the request to obtain opinion for further proceedings, which the Section 13 (2) shall be applied, *mutatis mutandis*.
- (4) If the Central Authority considers that the request may affect the international relation, or there is a reason not to proceed with the request, or the request is not subject to the provisions of this Act, the Central Authority shall notify the Requesting State or Ministry of Foreign Affairs, as the case may be, for further proceedings.

Section 15

In an urgent situation, the Requesting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request of Requesting State under extradition treaty with Thailand shall be delivered to the Central Authority. The state that has no such treaty shall submit its request through diplomatic channel.

A request described in paragraph 1 shall conform to the regulations defined by the Central Authority.

The consideration for proceedings shall be subject to the Section 14, *mutatis mutandis*.

Section 16

Upon the arrest of person sought described in Section 15, the person shall be delivered to the public prosecutor without delay, so that the court shall issue an order to detain the person sought pending presentation of the official request for extradition and documents from Requesting State.

If the court does not receive the complaint for extradition proceedings within sixty days from the date of arrest or within the date prescribed by the court, but not exceeding ninety days from the date of arrest, the person sought shall be discharged.

If the person sought is discharged as defined in paragraph 2 due to the failure of Requesting State to submit the formal request for extradition and the supporting documents required by Section 8 or in any case, the request for arrest under Section 15 shall be terminated, and the Requesting State shall not request the arrest of person sought in the same case, however, the refusal or termination of request for arrest shall not forbid the Requesting State to request for normal extradition.

Section 17

In a reasonable case, the Ministry of Foreign Affairs may propose the fact and opinion with respect to the international operation or international relation to the Central Authority before submitting to the court for consideration, and the court shall have authority to call the Ministry of Foreign Affairs to give explanation, and for consideration in the course of appeal.

Part 2

Extradition Procedures

Section 18

Subject to the provisions of Section 27, upon the arrest of person sought, the public prosecutor shall proceed with litigation without delay.

The court shall try a case continuously, except when the court deems appropriate to postpone the case as requested by the public prosecutor or person sought, however, the court shall order the detention of person sought during trial.

The detention and extradition procedures which are not prescribed by this Act, shall be subject to the Criminal Procedure Code, *mutatis mutandis*. If the request for provisional/temporary discharge is submitted, the court shall ask the public prosecutor whether or not it is objected. In case of objection, the court shall take it into consideration.

Before the trial, the court shall ask the person sought whether or not he/she has a lawyer. If not, the court shall appoint a lawyer and the Criminal Procedure Code shall be applied, *mutatis mutandis*.

Section 19

After the court has analyzed the witness and evidence, the court may issue an order of detention for extradition in any of the following cases:

- (1) The person arrested is sought for extraction and is not a Thai national, or the person is a Thai national under extraditable principles defined in Section 12.
- (2) The case has a reasonable ground for consideration if such offense is committed in the kingdom, or the law stipulates that it is committed in the kingdom, and
- (3) The offense is extraditable by this Act and it is not a military or political offense.

If the Court is of opinion that the evidence in paragraph 1 is insufficient, it shall order the accused to be discharged at the end of seventy-two hours after such order has been read, unless within this period, the Public Prosecutor notifies his intention to appeal. The appeal must be filed within thirty days and the Court shall order the accused to be detained pending the hearing of such appeal, and the provisions of Section 18, paragraph 13, shall be applied, *mutatis mutandis*.

Section 20

When the court issues an order of detention under Section 19, paragraph 1, the accused shall not be extradited before the end of thirty days from the date of detention order for extradition.

In a reasonable case where the extradition schedule of person with detention order for extradition is postponed, the public prosecutor shall submit a request to the court to consider the extension of detention for a necessary period. Such request shall be submitted before the end of ninety days from the date of final order of detention for extradition.

If the person has not been surrendered within ninety days from the date when the order of the court becomes final or within such extended time as the Court permits as requested by the public prosecutor in paragraph 2, the person shall be set at liberty.

Part 3 Appeal

Section 21

When the Court of First Instance orders the discharge or detention of person for extradition, the public prosecutor or the person may file an appeal to the Appeal Court within thirty days after such order has been read.

To consider the appeal, the Appeal Court shall consider the objection only for the part which it was ordered by the court under Section 19, whether or not there was sufficient evidence for the Court of First Instance to issue the order.

The judgment given by the Appeal Court shall be final.

CHAPTER 3

Extradition

Section 22

After the final judgment has been given to detain the person sought and the Government of Thailand has approved the extradition, the surrender of person sought to the Requesting State shall be done within ninety days from the date of final judgment or within such extended time as the Court permits as requested by the public prosecutor. The date, time, place and method of surrender for extradition shall conform to the Ministerial Regulations.

Section 23

If the Requesting State fails to take the surrender of person sought for extradition within a period prescribed under Section 22 without a reasonable ground, the Requested State may subsequently refuse extradition for the same offense(s).

The refusal of extradition defined in paragraph 1 shall not be subject to the provisions of Section 25.

Section 24

If the person under the final judgment of detention for extradition is charged or is imprisoned according to the judgment in Thailand for offense(s) other than offense(s) committed for extradition, the Government of Thailand may take any of the following procedures:

- (1) To surrender the person to the Requesting State.
- (2) To postpone the surrender until the litigation ends or until the person serves some or whole prison term according to the judgment.
- (3) To surrender the person to the Requesting State on temporary basis for litigation under conditions agreed by the Requesting State, and after the person has been surrendered to Thailand, the person may be surrendered to the Requesting State again for penalty according to the judgment.

Section 25

If there is no extradition to the Requesting State, the Central Authority shall notify the Competent Authorities for criminal prosecution against the person sought for extradition under Thai law.

Section 26

Unless otherwise considered by the cabinet, if the Requested State receives requests from two or more States for the extradition of the same person, either for the same offense or for different offenses, the Central Authority of the Requested State shall determine to which State and under what conditions it will surrender the person first. In making its decision, the Requested State shall consider all relevant factors:

- (1) whether or not the Requesting State has an extradition treaty with Thailand.
- (2) the place where each offense was committed.
- (3) the severity of offense which affects Requesting State and penalty
- (4) the order of request received from Requesting State
- (5) the nationality of the offender
- (6) the interest and readiness of prosecution
- (7) other reasons with respect to international relation according to the opinion given by the Ministry of Foreign Affairs.

The Central Authority shall consider and notify the Requesting State and follow the procedures under this Act.

Section 27

Upon the arrest of person sought, whether or not the request is made under this act, the Competent Authority shall ask the person of his/her consent for extradition.

If the person sought in paragraph 1 expresses consent for extradition, it shall be made in writing in the form prescribed by the Central Authority, and the public prosecutor shall take the person to the court to file a petition for the court to examine the consent immediately. If the court finds that the person voluntarily gives consent, the court shall issue an order of detention for extradition under Section 22.

The consent made before the court shall not be irrevocable.

During the examination of the court, if the person changes mind on the consent expressed to the Competent Authority, the court shall issue an order of detention for extradition consideration as prescribed under Chapter 2, Part 2.

Section 28

If the extradition case is in the course of proceeding at any court and the person expresses consent before the court for extradition, the trial proceeding at the court shall not be required and the order of detention for extradition shall be issued under Section 22.

The consent made before the court shall not be irrevocable.

CHAPTER 4

Requests for Extradition made by Thailand

Section 29

In the case of a request from Thailand for offense(s) of death penalty under Thai law, but it is not up to death penalty under the law of Requested State, and it is necessary for the government to consent that there shall be no death penalty which it is agreeable, if the court orders the death penalty, the government shall enforce the provisions of law by imposing life imprisonment instead of death penalty, and the mitigation shall not be allowed, except for the royal pardon.

Section 30

A request for extradition from Requested State to Thailand shall be submitted by the public prosecutor or other authorities to the Central Authority.

If the Central Authority deems appropriate to submit a request for extradition from Requested State, the Central Authority shall request the public prosecutor to issue the request for extradition and supporting documents.

A request for extradition in paragraph 1 and supporting documents shall conform to the regulations defined by the Central Authority.

The decision made by the Central Authority with respect to the extradition shall be final, unless otherwise prescribed by the cabinet's resolution.

The request to the state having no extradition treaty with Thailand shall be made by the Central Authority through diplomatic channel.

The request to the state having extradition treaty with Thailand shall be made by the Central Authority under such treaty.

Section 31

To execute the request in Section 30, the public prosecutor shall have an authority to verify fact and gather evidence, examine witness, demand any people to give testimony before the public prosecutor take necessary actions and notify the competent authorities or government officers to take actions for extradition purpose.

The order in paragraph 1 shall be considered as the command of public prosecutor under the Criminal Code.

CHAPTER 5

Extradition Expenses

Section 32

All expenses with respect to extradition to Requesting State or request for extradition to Thailand shall conform to the regulations, means and conditions prescribed by the Ministerial Regulations.

Transitory Provisions

Section 33

All extradition cases submitted to the court by the public prosecutor for litigation, before or on the date of enforcement of this Act, shall be subject to the provisions of Extradition Act, B.E. 2472, until the procedures end.

Section 34

If the Ministerial Regulations, rules or regulations under this Act is not announced or is not effective, and it is necessary to proceed with the extradition, the Extradition Act, B.E. 2472, and Extradition Treaty between Thailand and Requesting State shall be applied.

Countersigned by
General Surayud Chulanont
Prime Minister

Remarks: The reason for declaration of this Act is, the Extradition Act, B.E. 2472, has been applied for a long period of time and it is not suitable for current situation. Moreover, it cannot solve some issues in practice and the extradition cannot be efficiently executed. At present, the principles and practices of foreign countries are more developed. Therefore, it is necessary to revise the Act for efficiency and this Act is enacted from the above reasons.

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