

Treaty on Extradition Between the Republic of India and the Republic of Bulgaria

TREATY

India

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TREATY-ON-EXTRADITION-BETWEEN-THE-REPUBLIC-OF-INDIA-AND of 2007

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Treaty on Extradition Between the Republic of India and the Republic of BulgariaPublished vide Notification No. G.S.R. 15(E), the 3rd December, 2007Ministry of External AffairsG.S.R. 15(E). - Whereas the Extradition Treaty between the Republic of India and the Republic of Bulgaria was signed at Sofia on 23 October, 2003; and as per Article 20 of the Treaty, it has entered into force from 1 February, 2007, and which Treaty provides as follows:The Republic of India and the Republic of Bulgaria hereinafter referred to as the Contracting Parties, desiring to develop the legal co-operation in the field of extradition have agreed as follows:Article 1Duty to Extradite

1. Each Contracting Party when duly requested and subject to the provisions and conditions specified in this Treaty, undertakes to surrender to the other Party, persons within its territory, other than its own nationals, who are accused or convicted of any extraditable offence.

2. The Requested Party shall invoke all legally permissible measures in order to suspend naturalisation proceedings in respect of the person sought for extradition by the Requesting Party until a decision has been taken concerning the request for his or her extradition and, where the extradition request is granted, until his or her surrender.

3. Irrespective of the place or places of commission of the extraditable offence the Requested Party shall grant extradition:

a. When the person whose extradition is requested is a national of the Requesting Party; b. When the person sought is not a national of either Contracting Party, provided that the acts and omissions of the person sought amount to an offence affecting the interests of the Requesting Party or any of its nationals under the law of the Requested Party and the latter does not claim jurisdiction to prosecute for the same.

Article 2 Extraditable Offences

1. Extradition shall be granted in respect of offences, which under the law of both Contracting Parties are punishable by a minimum term of imprisonment or other forms of deprivation of liberty for a minimum period of at least one year. In case extradition is requested for the purpose of serving one or more of punishments, extradition shall be granted if the aggregate term of the sentences, which remain to be served for one or more extraditable offences, is not less than six months.

2. If the request for extradition includes several separate offences, some of which do not fulfil the condition of para 1 with regard to the amount of punishment which may be awarded, extradition shall be granted for the offence, which meets the above specified conditions. This rule shall apply only to offences that meet the other conditions of this Treaty.

3. Subject to the conditions set out in para 1 extradition shall also be granted in respect of an attempt or conspiracy to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence.

Article 3 Refusal to Extradite

1. Extradition shall not be granted in cases when:

a. criminal proceedings have been instituted or a judgement has been passed by the judicial authorities of the Requested Party upon the person sought in respect of the offence or offences for which extradition is requested; b. by the date of receipt of the request for extradition, the criminal prosecution or the execution of the punishment has been barred by lapse of time that constitutes a limitation under the law of either of the Contracting parties.

2. Extradition shall not be granted if the offence, in respect of which it is requested, is regarded by the Requested Party as a political offence, an offence of political character, or as an offence connected with such an offence.

3. For the purpose of this Treaty the following offences shall not be deemed to be offences within the meaning of para 2:

a. any offence in respect of which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought, or to submit his or her case to their competent authorities for a decision as to prosecution; b. murder, manslaughter or culpable homicide, maliciously wounding or inflicting grievous bodily harm; c. kidnapping, abduction, or any comparable form of unlawful Detention, including the taking of hostages; d. placing or using an explosive, detonating device, destructive device, firearm or ammunition, capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage; e. any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as a political offence; f. an attempt or conspiracy to commit, or aiding, abetting, inciting or participating in the commission of, any of the foregoing offences.

4. Extradition shall not be granted if the Requested Party has substantial reasons to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality, ethnic origin, political opinions, sex or status, or that person's position may be prejudiced for any of those reasons; or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and political Rights.

Article 4 Optional Ground to Refuse Extradition Extradition may be refused if the offence for which extradition is requested has been committed outside the territory of either Contracting Party and the law of the Requested Party does not apply to such offence when committed outside its own territory. Article 5 Capital Punishment If the offence for which extradition is requested is punishable by death under the law of the Requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the Requested Party or is not normally carried out, extradition may be refused unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death penalty will not be imposed, or if imposed will not be carried out. Article 6 Institution of Criminal Proceedings in the Requested Party

1. If extradition is refused on any of the grounds under Article 1(1), Article 3(1a) and Article 3(4), the Requested Party shall submit the case to its competent authorities for institution of criminal proceedings. For this purpose the Requesting Party shall submit the procedural documents and all available information necessary for the proceedings.

2. The Requested Party shall immediately inform the other Contracting Party on the outcome of the instituted criminal proceedings.

Article 7 Rule of Speciality

1. A person who has been extradited shall not be subjected to any measures of coercion or restriction in his or her personal freedom for any offence committed prior to submission of the extradition request other than that for which he was extradited.

2. A person extradited under this Treaty shall not be detained or tried or be subjected to any other restriction of his personal liberty in the Requesting Party for any offence committed before his extradition, other than:

a. an offence in respect of which he was extradited, or another offence in respect of which he could be convicted based on the proven facts used to support the request for his extradition, or b. another extraditable offence in respect of which the Requested Party has consented to his or her being so detained or tried, or subjected to any other restriction of his or her personal liberty.

3. The extradited person shall not, without the consent of the Requested Party, be surrendered to a third State in respect of offences committed before his or her surrender to the Requesting Party.

4. In the case under para 3 the Requesting Party shall transmit a request, the documents mentioned in Article 8 (1) (b) and (c), and if necessary - the documents mentioned in Article 8 (1) (a) or in the case of extradition to a third state, the request of the latter for extradition and the documents submitted by the third State. The request shall be accompanied by declarations given by the extradited person before a Judicial Authority of the Requesting Party with a view to extending the scope of the extradition or giving consent to his or her extradition to a third Party.

5. The provisions of the preceding paragraphs shall not apply in case when having had the opportunity to leave the territory of the Party to which the extradited person has been surrendered, he or she has not done so within 45 days of his or her final discharge or has voluntarily returned to that territory after having left it.

Article 8 Request and Accompanying Documents

1. The request shall be accompanied by:

a. the original or an authenticated copy of the warrant of arrest, or if the request has been made in view of serving a sentence, an original or an authenticated copy of the final conviction and sentence, together with a document specifying the part of the punishment which has already been served and the part which remains to be served; b. a description of the offences for which extradition is requested indicating the time and place of their commission and the applicable legal provisions; c. the text of the relevant legal provisions, including limitations; d. as accurate a description as possible of the person sought, together with any other information, which will help establish his or her identity and nationality.

2. If the information is found to be insufficient, the Requested Party shall require the Requesting Party to give the necessary supplementary information about the circumstances mentioned under para 1 and may fix a time limit for the receipt thereof. This time limit may be extended upon a request giving the reasons thereof.

3. Additional requests for legal assistance in connection with the extradition already granted shall be examined in the context of the information already furnished on the case.

Article 9 Provisional Arrest

1. If one of the Parties applies for provisional arrest of a person, whose extradition it intends to request, the other Party may, in accordance with its law, arrest that person or impose any other measure of compulsion prior to the receipt of the request for extradition.

2. The request for provisional arrest shall contain a statement of the existence of a warrant of arrest or a final conviction against him, a declaration of intention to request the extradition of that person; a description of the offence for which extradition is requested indicating the

time and place of its commission; legal provisions, applicable to the offence and the prescribed punishment, and if necessary, information about what part of the sentence remains to be served, as well as the information necessary for the identification of the person.

3. The Requested Party shall inform without delay the other Party of the progress of its request and of the date of arrest or imposition of another measure of coercion.

4. The arrest of the person or the other measures of coercion shall be terminated if the Requested Party has not received a request and the documents mentioned in Article 8 upon the expiration of 90 days from the date of the arrest or the date of the execution of the other measures of coercion. This provision shall not prevent re-arrest or imposition of other measures of coercion if the request for extradition is received after the expiration of the above time limit.

Article 10 Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested Party to such a convenient point of departure from the territory of that Party as the Requesting Party shall indicate.

2. The Requesting Party shall take over the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requesting Party. If the person is not taken over within that period, the Requested State may refuse to extradite him or her for the same offence.

Article 11 Temporary Extradition or Postponement of Surrender

1. The decision whether or not to extradite shall be taken and immediately communicated to the Requesting Party, regardless of whether criminal proceedings against the person sought have been instituted in the territory of the Requested Party, or whether he or she is serving a sentence on the territory of the Requested Party in respect of an offence other than that for which extradition is requested.

2. The Requested Party may, after having granted extradition, postpone the surrender until the criminal proceedings or the sentence referred to in para 1 are completed. The Requested Party may instead of postponing surrender, temporarily extradite the person sought to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties. The extradited person shall be detained during his or her stay in the territory of the Requesting Party and shall be transferred back to the Requested Party within the agreed period, which shall not exceed three months.

Article 12 Handing over of Property

1. When a request for extradition is granted, the Requested Party shall, upon request and in so far as its law allows, hand over to the Requesting Party the articles (including sums of money) which may serve as evidence, including real evidence of the offence.

2. If the articles in question are liable to seizure in the territory of the Requested Party, the latter may, in connection with pending judicial proceedings, temporarily retain them. When the articles are liable to confiscation the Requested Party may retain them or hand them over on condition that they are returned.

3. These provisions shall not affect the rights of the Requested Party or the rights of any person other than the person sought. When such rights exist, the articles shall be returned upon request from the Requested Party without imposing any charges, within the shortest time after the termination of criminal proceedings.

Article 13 Competing Requests If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested Party shall make its decision having regard to all circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent extradition to another State. Article 14 Information on the Result of Criminal Proceedings The Contracting Party, whose extradition request has been granted for the purpose of carrying out criminal proceedings shall communicate to the other Party the rendered verdict. Article 15 Transit

- 1. Each Contracting Party, on submission of a request from the other Contracting Party, shall allow transit through its territory of a person extradited from a third state to that other Party.**
- 2. The provisions of Article 8 shall apply to transit requests. Transit may be refused on the same grounds on which extradition may be refused under this Treaty.**
- 3. If air-transport without landing is used, the permission of the Party over whose territory the flight is made, shall not be necessary. The other Party shall, however, notify in due time the transit passing and shall provide the information necessary to identify the person, and relating to the offence committed, its legal provisions applicable to the offence committed and to the term of the sentence, if possible, and shall certify that either warrant of arrest or final imprisonment sentence exist. In case of a landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 9.**

Article 16 Communications

- 1. The requests for extradition shall be formalised in accordance with the national legislation of the Requesting Party.**
- 2. For the purposes of this Treaty communications shall be carried out through a diplomatic channel. The request for provisional arrest may also be transmitted through the International Organisation of Criminal Police (INTERPOL).**
- 3. Requests for extradition, documentation and all legal and other accompanying documents shall be sent in the language of the Requesting Party and shall be accompanied by a certified translation into English or in the language of the Requested Party.**

Article 17 Mutual legal Assistance in Extradition Each Contracting Party shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence in respect of which extradition has been requested. Article 18 Obligations under International Conventions or Treaties The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from international conventions or treaties to which they are parties. Article 19 Expenses Extradition expenses shall be borne by the Party on whose

territory they have been incurred and airfares and transit expenses incurred in relation to the extradition of the person shall be borne by the Requesting Party. Article 20 Final Provisions

- 1. This Treaty shall be subject to ratification.**
- 2. This Treaty shall enter into force on the first day of the second month following the month of the exchange of instruments of ratification, which shall take place as soon as possible after signing of the Treaty.**
- 3. This Treaty is concluded for an unlimited period. Either of the Contracting Parties may denounce this Treaty at any time. Denunciation shall take effect on the date of expiration of a six month period following the date of the receipt of the notification by the other Party.**

Done in duplicate at SOFIA on 23rd day of October, 2003 in Hindi, Bulgarian and English languages, the three texts being equally authentic. In case of any difference in the interpretation, the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section (1) of the Section 3 of the Extradition act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Bulgaria from the dated of the publication of this notification.