

Extradition Treaty Between the Republic of India and Ukraine

UNION OF INDIA

India

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EXTRADITION-TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-UKRAINE of 2008

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Extradition Treaty Between the Republic of India and Ukraine Published vide Notification No. G.S.R. 381(E), 16th May, 2008 Ministry of External Affairs G.S.R. 381(E). - Whereas the Extradition Treaty between the Republic of India and Ukraine was signed at New Delhi on 30th October, 2002; and the exchange of the Instruments of Ratification of the Treaty took place at New Delhi on 19th December, 2006 and has entered into force from 19th January, 2007 in terms of Article 22, and which Treaty provides as follows : The Republic of India and Ukraine hereinafter referred to as Contracting Parties; Desirous of making more effective the corporation of the two countries in the suppression of crime in general and organized crime in particular by making provision for the reciprocal extradition offenders; Have agreed as follows : Article 1 Duty to Extradite The Contracting Parties agree to extradite to each other, pursuant to the provisions of this Treaty, any person, who is accused or charged with or convicted of an extraditable offence, by the competent authorities of the requesting Contracting Party, whether such offence was committed before or after the entry into force of this Treaty, as well as if it is committed in a third State by a national of the requesting Contracting Party and the requesting Contracting Party bases its jurisdiction on the nationality of the offender. Article 2 Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct, which under the laws of each Contracting Party is punishable by a term of imprisonment for a period of at least one year.

2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenues or is one of a purely fiscal character.

3. While arriving at a decision of what constitutes an extradition offence, due regard shall be paid to the substantive aspects of the offence, rather than the terminology used.

Article 3 Composite Offences Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the territory of the requested Contracting Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties. Article 4 Refusal of Extradition of Nationals The nationals of one of the Contracting Parties shall not be extradited to the other Contracting Party. The requested Contracting Party shall submit the material and evidence to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both the Contracting Parties. Article 5 The Political Offence Exception

1. The requested Contracting Party may refuse extradition, if the offence, for which it is requested, is considered as offence of a political character.

2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:

(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970; (b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971; (c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December, 1973; (d) an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December, 1979; (e) an offence within the scope of the Convention for the Suppression of Terrorist Bombings, opened for signature at New York on 12 January, 1998; (f) any other offence provided in an international treaty/convention to which both countries are parties; (g) murder or incitement to murder; (h) culpable homicide; (i) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise; (j) the causing of an explosion likely to endanger life or cause serious damage to property; (k) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property; (l) the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life; (m) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person; (n) damaging property whether used for public utilities or otherwise with intent to endanger

life or with reckless disregard as to whether the life of another would thereby be endangered;(o)kidnapping, abduction, unlawful deprivation of liberty including unlawful confinement or hostage taking;(p)a conspiracy or an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence; and(q)any other offence related to terrorism.Article 6Offences of conspiracy, incitement and attempt, and Extra-territorial jurisdiction

1. It shall be an offence under the laws of both the Contracting Parties for any person to abet, conspire or attempt to commit, or incite or participate as an accomplice in the commission of, any extradition offence.

2. It shall also be an offence under the laws of both the Contracting Parties, for any citizen of a Contracting Party to commit any offence in any place beyond its territory.

Article 7Extradition and Prosecution

1. The requested Contracting Party may refuse to extradite the person sought if the competent authorities of such Contracting Party are proceeding against him in respect of the offence or offences for which extradition is requested.

2. Where the requested Contracting Party refuses a request for extradition for the reasons as provided in paragraph 1 of this Article, it shall submit the case to its competent authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any serious offence of a similar nature under the law of that Contracting Party.

3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8Grounds for refusal of ExtraditionExtradition shall not be granted if :(a)the person is a citizen of the requested Contracting Party; or(b)on the date when the request is received, the offence or the sentence has become barred by lapse of time under the laws of the requested Contracting Party; or(c)the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law; or(d)a person who has been convicted of an extradition offence was sentenced to imprisonment or other form of detention for a period of four months or less; or(e)a person if proceeded against in the territory of the requested Contracting Party for the offence for which his extradition is requested, be entitled to be discharged under the laws of the requested Contracting Party relating to previous acquittal or conviction.Article 9Postponement of Surrender and Temporary Surrender

- 1. If criminal proceedings against the person sought are instituted in the territory of the requested Contracting Party, or he is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite him may be postponed until the criminal proceedings have been completed or he is no longer detained, for an offence other than that for which extradition is requested.**
- 2. A person sought may not be extradited until it has been decided in accordance with the law of the requested Contracting Party that he is liable to be extradited.**
- 3. The requested Contracting Party may, instead of postponing surrender, temporarily surrender the person sought to the requesting Contracting Party in accordance with conditions to be determined by mutual agreement between the Contracting Parties.**

Article 10 Channels or Communications and Central Authorities

- 1. The request for extradition under this Treaty shall be made through the diplomatic channels.**
- 2. For the purposes of this Treaty the Contracting Parties shall communicate through their Central Authorities. The Central Authority for the Republic of India shall be the Ministry of External Affairs. The Central Authority for Ukraine shall be the General prosecutor's Office (concerning cases at the stage of pre-trial investigation) and the Ministry of Justice (concerning cases at the trial stage and at the stage the sentence is carried out).**

Article 11 Extradition Procedures

- 1. The request shall be made in writing and shall be accompanied by the following:**

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence; (b) a statement of the facts of the offence for which extradition is requested; and (c) the text, if any, of the law: (i) defining that offence; and (ii) prescribing the maximum punishment for that offence.

2. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest/decision on the detention or taking into custody issued by a competent court or authority of the requesting Contracting Party, as well as by a statement of evidence on which the extradition request is based.

3. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the person is no longer entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.

4. If the requested Contracting Party considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 12 Provisional Arrest

1. In urgent cases the person sought may, in accordance with the law of the requested Contracting Party, be provisionally arrested on the application of the competent authorities of the requesting Contracting Party. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest/decision on the detention or taking into custody or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest/decision on detention or taking into custody had the offence been committed, or the person sought been convicted, in the territory of the requested Contracting Party.

2. A person arrested upon such an application shall be set at liberty upon the expiration of 40 days from the date of his arrest if a request for his extradition shall not have been received. This period will be extended by a further period of 20 days upon the request of the requesting Contracting Party. This provision shall not prevent the rearrest of the person sought for the extradition if a request is subsequently received.

3. A request for provisional arrest shall be sent to the competent authorities of the requested Contracting Party either through the diplomatic channels or directly by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Contracting Party. The requesting authority shall be informed without delay of the result of its request.

Article 13 Rule of Speciality

1. The extradited person may not without consent of the requested Contracting Party, be prosecuted or punished in the requesting Contracting Party for an offence other than that for which extradition has been granted and any lesser offence disclosed by the facts proved for the purposes of securing his extradition, nor may such a person, without consent of the requested Contracting Party, be extradited to a third State.

2. The consent of the requested Contracting Party is not required if:

(a) the extradited person has not left, though he had the opportunity, the territory of the requesting Contracting Party within 45 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the requesting Contracting Party for reasons beyond his control; (b) if the extradited person, once having left the territory of the requesting Contracting Party, voluntarily returns there.

3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of the person to the requesting Contracting Party or matters arising in relation to such offences.

4. A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

Article 14 Recognition of Documents and Evidence

1. Documents issued or certified and statements recorded by competent courts or other authorities in the prescribed form in the territory of one Contracting Party as per its laws shall not require any form of authentication

in the territory of the other Contracting Party.

2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidential force of public documents also in the territory of the other Contracting Party.

Article 15Competing RequestsIf extradition is requested concurrently by more than one State, either for the same offence or for different offences, the requested Contracting Party shall make its decision having regard to all the 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 16Capital PunishmentIf under the law of the requesting Contracting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the requested Contracting Party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting Contracting Party gives such assurance as the requested Contracting Party considers sufficient that the death penalty will not be carried out.Article 17Surrender of Persons

1. The requested Contracting Party shall inform the requesting Contracting Party of its decision with regard to the extradition.

2. If extradition is granted, the person sought shall be sent by the authorities of the requested Contracting Party to such convenient point of departure from its territory as the requesting Contracting Party shall indicate.

3. The requesting Contracting Party shall remove the person sought from the territory of the requested Contracting Party within one month or such longer period as may be permitted under the law of the requested Contracting Party. If he is not removed within that period, the requested Contracting Party may refuse to extradite him for the same offence.

4. If circumstances beyond its control prevent a Contracting Party from surrendering or taking over the person to be extradited, it shall

notify the other Contracting Party. The two Contracting Parties shall agree on a new date for surrender.Article 18Surrender of Articles

1. When a request for extradition is granted, the requested Contracting Party shall, upon request and so far as its law allows, hand over to the requesting Contracting Party Articles (including sums of money) which may serve as proof or evidence of the offence.

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

3. These provisions shall not prejudice the rights of the requested, Contracting Party or any person other than the person sought. When these rights exist the Articles shall on request be returned to the requested Contracting Party without charge as soon as possible after the end of the proceedings.

Article 19 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 for which extradition has been requested. Article 20 Language of Documents The request, supporting documents and the other communications to be produced according to this Treaty, shall be accompanied by a translation in English. Article 21 Expenses Expenses incurred in the territory of the requested Contracting Party in connection with extradition shall be born by that Party. Article 22 Final Provisions

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged as soon as possible at a place and on a date mutually agreed by the Contracting Parties. It shall enter into force thirty (30) days after the date of the exchange of instruments of ratification.

2. Either of the Contracting Parties may terminate this Treaty at any time by given a written notice to the other Contracting Party through the diplomatic channels; and if such notice is given the Treaty shall cease to have effect six months after the receipt of such notice by the other Contracting Party.

Done at New Delhi this Thirty Day of October 2002 in two originals, each in Hindi, Ukrainian and English, all text being equally authentic. In case of any divergence of 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 Ukraine from the dated of the publication of this notification.