



Extradition of Nationals

Argentina • Canada • China • Czech Republic
France • Germany • Greece • India • Iran • Israel
Italy • Japan • Lebanon • Mexico • Malaysia
Netherlands • Nigeria • Republic of Poland
Russian Federation • Sweden
Turkey • United Kingdom

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ARGENTINA

The Argentine Constitution has no provision on extradition of nationals. It is Law 24767¹ on International Cooperation in Criminal Matters which provides that if the requested individual is an Argentine national, he or she may opt to be tried by Argentine courts unless a treaty requiring the extradition of nationals applies.² The Argentine nationality should have existed at the time the crime was perpetrated and thereafter until the time he or she has to opt for the pertinent court.³

If the requested individual opts to be tried by Argentine courts, then the extradition will be denied. He or she will be tried in Argentina, according to Argentine criminal law insofar as the requesting country agrees to do so by resigning its jurisdiction over the matter transferring all background and evidence related to the case in order for the trial in Argentina to take place.⁴

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¹ Law 24767 of December 18, 1996 in BOLETIN OFICIAL of January 16, 1997.

² *Id.*, art. 12, para. 1.

³ *Id.*, art. 12, para. 2.

⁴ *Id.*, art. 12, para. 3.

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CANADA

Canadian law does not generally prohibit the extradition of Canadian citizens, and Canada has, in practice, extradited nationals on a variety of charges. However, the issue of whether the Federal Government can legally extradite a Canadian citizen facing a possible death sentence in a foreign country is due to be considered by the Supreme Court of Canada very shortly. The case at hand involves two Canadians charged with aggravated first-degree murder in the State of Washington. The British Columbia Court of Appeal ruled that unlike aliens they could not be extradited to face the death penalty because the Canadian Charter of Rights and Freedoms guarantees citizens the right to return to the country.* The Federal Government appealed that decision to the Supreme Court. The Government's position has been that it does not want Canada to become a haven for Canadians seeking to avoid the death penalty for murders committed in the United States.

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* Constitution Act, 1982, Sched. B, §6, R.S.C. No. 44 (App. 1985).

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CHINA

Neither the Constitution nor any domestic law of the People's Republic of China bars the extradition of its nationals. However, the treaties on extradition signed by China and foreign governments usually have a provision prohibiting extradition abroad of Chinese nationals.

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CZECH REPUBLIC

The Czech Republic does not extradite its own citizens.

Extradition is regulated by articles 379-383 of the Code of Criminal Procedure.¹ Article 379 prohibits extradition of Czech citizens. The prohibition is in line with article 6 of the European Convention on Extradition, which the Czech Republic is a party to² and which provides that contracting parties have the right to refuse extradition of its citizens.

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¹ Code of Criminal Procedure of November 29, 1961, No. 141, Collection of Laws, Consolidated Text of April 20, 1994, No. 69, COLLECTION OF LAWS, as amended.

² European Convention on Extradition signed at Paris 13. December 1957. Czech Republic signed on February 13, 1992, at Strasbourg. The Convention entered in force on April 18, 1960, for the Czech Republic on July 14, 1992: Announcement of the Federal Ministry of Foreign Affairs of the Czech and Slovak Federative Republic of December 9, 1992, No. 549, COLLECTION OF LAWS.

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FRANCE

Unless otherwise provided by bilateral treaties, France does not extradite its nationals. Article 3.1 of the extradition law, dated March 10, 1927,¹ states the general principle of non-extradition of nationals. Extradition will not be granted when the offender was a French national at the time of commission of the offense. The ratification by France of the European Convention on Extradition did not modify this principle as article 6.1 gives the contracting parties the right to refuse extradition of their nationals, and France, in its reserves, stated that "the extradition shall not be granted when the offender whose extradition is requested was a French national at the time of the commission of the offense."²

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¹ CODE DE PROCEDURE PENALE., at 607, 608 (Daloz 1996-1997).

² *Id.*, at 621, 626.

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GERMANY

The German Constitution provides:

No German may be extradited to a foreign country.¹

The German Act on Mutual Assistance in Criminal Matters allows only for the extradition of foreigners and defines foreigners as person who are not Germans.²

The German extradition practice lives up to this constitutional and statutory requirement by categorically denying the extradition of German nationals, even if they have another citizenship.³ Likewise, the extradition treaties that Germany has concluded with other countries give Germany the right to refuse the extradition of German nationals.⁴

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¹ Grundgesetz für die Bundesrepublik Deutschland, May 23, 1949, BUNDESGESETZBLATT [BGBl., official law gazette of the Federal Republic of Germany] at 1, art. 16, ¶ 2.

² Gesetz über die internationale Rechtshilfe in Strafsachen, Dec. 23, 1982, BGBl. I, at 2071, as amended, § 2.

³ S. Uhlig, GESETZ ÜBER DIE INTERNATIONALE RECHTSHILFE IN STRAFSACHEN 36 (München, 1992).

⁴ The extradition treaty between Germany and the United States signed June 20, 1978 (32 UST 1485) provides in its article 7 that neither of the contracting parties shall be bound to extradite its own nationals.

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GREECE

The Greek Constitution of 1975/1986 contains no provision that bans the extradition of Greek nationals. However, such a prohibition is found in the Greek Code of Criminal Procedure. Article 438, which deals with cases under which extradition is prohibited explicitly, states that extradition is prohibited:¹

a) if the requested person was a Greek national at the time the offense was committed.

Pursuant to article 436 of the Code of Criminal Procedure, the above provision applies if there is no extradition agreement between the countries involved. In case there is an extradition agreement, the prohibition applies if there is no provision to the contrary in the agreement, or if the agreement is silent on the question of extradition of nationals.²

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¹ Kodikes Nomikes Vivliotheke, KODIKAS POINIKES DIKONOMIAS 938 (1995).

² *Id.* at 937.

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INDIA

If an extradition treaty exists between India and a foreign government, the laws of India do not bar the extradition of the Indian national criminal offender for trial abroad in cases in which the offense was committed in the foreign country.*

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* The Extradition Act, No. 34 of 1962; THE INDIAN PENAL CODE, No. 45 of 1860, §4.

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IRAN

According to the Extradition of Criminals Law of May 25, 1960^{*}, extradition of criminals will take place in accordance with the terms of an extradition agreement between Iran and a foreign country. In the absence of an agreement, the provisions of the Law on Extradition of Criminals have to be observed.

The above Act provides:

"Iranian government may, at the request of a foreign government, extradite non-Iranian individuals being a resident of Iran, under the following conditions:"

Article 8 is more specific regarding the question, as it provides:

"Extradition request shall not be accepted under the following conditions:

1. If the person requested is an Iranian."

Therefore, Iranian law does not allow the government to extradite an Iranian citizen to a foreign country under no conditions or circumstances. The only exception to this rule is if the Iranian government agrees to extradite an Iranian citizen in an extradition agreement on condition of reciprocity.

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* F. Ghorbani, MAJMU'AH KAMILI QAVANIN VA MUQARRARATI JAZA'I [Complete Compilation of Criminal Laws and Regulations], 1990, at 872 (in Persian).

ISRAEL

The following is a general summary of the law applying to extradition of Israeli nationals to requesting countries. An indepth analysis of the law and its application to the Sheinbein case as applied by Israel's Supreme Court is being prepared.¹

Israel's Extradition Law, 5714-1954,² as amended, regulates the extradition of persons from Israel to requesting countries. It provides that a person may be extradited if:

- (1) an agreement providing for reciprocity as to the extradition of offenders exists between Israel and the state requesting extradition...;
- (2) [the individual] is accused or has been convicted in the requesting state of an offence of a non-political character and which, had it been committed in Israel, would be one of the offenses set out in the Schedule to this Law....

In 1978 the Israeli Parliament (*Knesset*) passed an amendment to the Extradition Law. Section 1a was added, and states:

An Israeli national shall not be extradited save for an offence committed before he became an Israeli national.³

The amendment seems to be contradictory to the commitment undertaken by Israel in the 1962 Treaty. Under Israeli law, the 1978 amendment takes precedence over the 1962 commitment. This is because like under British law, "conventional international law does not become part of Israeli law through automatic incorporation, but only if it is adopted or combined with Israeli law by enactment of primary or subsidiary legislation from which it derives its force."⁴ The Parliament has authority to legislate and amend earlier laws. The 1978 amendment thus would supersede the 1962 obligation if the two were deemed inconsistent and irreconcilable.

It has been reported that Israel's Minister of Justice and its General Attorney attended a meeting of the Knesset's⁵ committee for Law and Constitution in order to convince its members to repeal the above amendment. The General Attorney requested that the members speed up legislation of the government's bill, which proposes to hold that an Israeli citizen who committed an offense abroad and escaped to Israel, cannot avoid justice, but will be extradited to the state where the offense was committed for the purpose of facing trial, and then will be transferred to Israel for serving the penalty

¹ The study may be ordered by request from the Law Library at 707-4351, author, Ruth Levush, Senior Legal Specialist, at 707-9847.

² 8 LAWS OF THE STATE OF ISRAEL (LSI) 144 (5714-1953/54).

³ Offenses Committed Abroad (Amendment of Enactments) Law, 5738-1978, 32 LSI 63 (5738-1977/78).

⁴ A. Shapira & K. De Witt-Arar, *eds.*, INTRODUCTION TO THE LAW OF ISRAEL 386, ft. 9 (1995).

⁵ Israel's Parliament.

imposed by the court.⁶ The justification for the proposed amendment is that the 1978 amendment made Israel a shelter for criminals and does not allow the country to implement the extradition agreement with several countries, including the United States.⁷ In response to questions by the committee's chairman and other members, the General Attorney was not willing to commit to the idea that the proposed amendment would apply to Sheinbein. Members of the committee expressed the view that although they had no sympathy for the Jewish youth whose extradition is sought by the U.S. the Parliament should adhere to the basic principle that no retroactive law should be enacted. One member suggested that the committee would delay its decision until the Supreme Court reached a decision in the matter.

Non-extradition of Israeli nationals charged or convicted of offenses committed abroad does not automatically result in their release. The 1978 amendment⁸ further authorized the Israeli courts to:

- (a) ...try under Israeli law an Israeli national or resident of Israel who committed abroad an act which, if it had been committed in Israel, would be one of the offenses included in the Schedule to the Extradition Law....

The arrangement according to which a trial is conducted in Israel in lieu of extradition of Israeli nationals to the country where the offense was committed has been criticized before the Sheinbein case became an issue. The Israeli press reported⁹ that dissatisfaction has been expressed by the Prosecutor's Office with the current arrangement which makes it difficult to take a deposition from witnesses who sometimes refuse to come to Israel. Even in cases when witnesses do appear, the state finances both their travel and stay in Israel. It has been further reported that the trial of Mizrachi and Rich, who were accused of murder and drug offenses committed in the United States, cost two million dollars, some of which was financed by the United States.

The new government's proposed bill discussed above may bring a solution to these problems. The incarceration in Israel of persons convicted abroad, as the bill suggests, however, will involve high costs for Israeli taxpayers.

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⁶ G. Alon, Members of Knesset Against Amendment of the Law that will enable Extradition of the Youth from Maryland, HAARETZ 11/3/98, <http://www.haaretz.co.il/daily/txt/IT2-52.htm>

⁷ G. Alon, *Hanegbi and Rubinshtein Will Try Today in the Constitution Committee to Allow Extradition of Israelis*, HAARETZNEWSPAPER of 11/02/98, <http://www.haaretz.co.il/daily/txt/IT2-51.htm>

⁸ *Supra* note 4.

⁹ A. Vinberg, *Unnecessary Trial for Two Million Dollars*, MAARIV (Oct. 7, 1997).

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ITALY

Extradition in Italy is regulated by articles 10 and 26 of the Italian Constitution and by the pertinent provisions of the Penal Code (art.13) and the Code of Penal Procedure (arts. 697-722).¹

The Italian Constitution establishes that Italian citizens may be extradited only when expressly prescribed by international agreements, but in no case may extradition be allowed for political offenses. Extradition of foreigners is not excluded except in cases involving political offenses.²

Since capital punishment is completely banished from the Italian legal system,³ extradition to countries where such a sentence may be imposed poses serious questions of constitutional legitimacy as regards the participation of the Italian government in the execution of penalties that in no case and for no type of crime could be inflicted in Italy.⁴

The issue was finally settled by Decision No. 223 of June 27, 1996,⁵ of the Constitutional Court, which declared the constitutional illegitimacy of Italian legislation that allowed the extradition of an individual who had committed a crime punishable by the death penalty in the country requesting the extradition unless Italian authorities received sufficient guarantees as to the non-application or non-execution of such a penalty.

The unconstitutionality declared by Decision No. 223 affects article 698 of the Italian Code of penal Procedure, as well as that part of the law of ratification and execution of the Extradition Treaty between the United States and Italy that provides for the execution of article IX of the Treaty pertaining to those guarantees.

The Prohibition of the death penalty, the Court ruled, has a special relevance in the Constitution. Introduced in the fourth paragraph of article 27, it is represented in the constitutional

¹ CODICE PENALE E DI PROCEDURA PENALE (Napoli, Simone, 1994).

² *Id.*

³ The death penalty for ordinary crimes was abolished in Italy in 1944, after the collapse of the Fascist regime. The last remnants of capital punishment present in the military criminal Code, for use in times of war, were removed by law in 1994. Their removal was a logical and necessary step as a consequence of Italy's ratification of Protocol No. 6 of the European Convention on Human Rights, signed at Strasbourg on April 28, 1983, and entered into force in Italy on January 1, 1989.

⁴ Constitutional Court Decision No. 54 of June 21, 1979, declared the unconstitutionality of R. D. No. 5726 of 1870 on extradition between Italy and France, in connection with crimes punishable by the death penalty.

⁵ GIURISPRUDENZA COSTITUZIONALE (Milano, Giuffrè, 1996).

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system as a projection of the guarantee to the fundamental right to life, which is the first of the inviolable Rights of Man recognized in article 2. The Court further stated that the fourth paragraph of article 27, read in the light of article 2 of the Constitution, is an absolute parameter for the evaluation of the constitutional legitimacy of the general law on granting extradition (the Code of Penal Procedure) and of the laws that provide for the execution of international treaties on extradition and on judicial assistance.

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JAPAN

The Constitution of Japan does not contain any provisions concerning extradition. However, article 2, item 9 of the Extradition Law bars the extradition of Japanese nationals.*

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* Law No. 68, July 21, 1948), as last amended by Law No. 89, Nov. 12, 1993.

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LEBANON

Countries Denying Extradition of Own Nationals

Except where otherwise required by a treaty having the force of law, the Lebanese Penal Code¹ denies the extradition of anyone to a foreign country, save in the following cases:²

- (a) Crimes committed on the territory of the country demanding the extradition;
- (b) Crimes against the security and the financial well-being of the country demanding the extradition; and
- (c) Crimes committed by a national of the country demanding the extradition.

There are, to be sure, a number of conditions which would still deny extradition even in these cases. Among them: if the crime is of a political nature (excluding wanton killing and destruction), and if the punishment for the crime in the country demanding the extradition is inhumane and therefore contrary to the public order of Lebanon.³

These provisions of the Lebanese Penal Code are based on the principle of law that a state shall normally prosecute crimes committed on its own territory, or by its own nationals, or against its own national security; hence the absence of any provision in the Code which specifically denies the extradition of Lebanese nationals.

Lebanon is a party to several extradition treaties concluded both with its neighbors and with European states.

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¹ Legislative Decree No. 340 of 1943.

² *Id.* arts. 30 and 31.

³ *Id.* art. 34.

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MEXICO

The Constitution of Mexico does not bar the extradition of a Mexican national¹ However, the Law on International Extradition provides that no Mexican shall be extradited to a foreign country, except in special cases at the discretion of the Executive.² This Law is applied when no extradition treaty exists.³

Mexico and the United States signed a bilateral extradition treaty on May 4, 1978. It entered into force on January 25, 1980.⁴ Article 9 of the Treaty states as follows:

- 1.- Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall, if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so.
- 2.- If extradition is not granted pursuant to paragraph 1 of this Article, the requested Party shall submit the case to its competent authorities for the purpose of prosecution, provided that Party has jurisdiction over the offense.⁵

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¹ CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [DIARIO OFICIAL, D.O.] Feb. 5, 1917, errata: D.O., Feb. 6, 1917, as amended numerous times, art.15.

² Ley de Extradición Internacional (D.O., Dec. 29, 1975), as amended art. 14.

³ *Id.* art. 1.

⁴ 31 EXTRADITION TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES (United States Treaties and other International Agreements, 1979), at 5059-5078.

⁵ *Id.* art. 9.

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MALAYSIA

The Constitution of Malaysia does not contain any provisions regarding extradition.

The Extradition Act 1992, Act 479,¹ in its Part IX entitled "Miscellaneous," stipulates that Malaysia, through the Minister of Home Affairs, **may** (emphasis added), refuse the surrender or the return of a fugitive criminal if the fugitive criminal is a citizen of Malaysia.²

The Act further states that in the event that extradition is refused under the above provision, the Minister shall, if courts in Malaysia have jurisdiction over the extradition offense, submit the case to the Public Prosecutor with a view to having the fugitive criminal prosecuted under the laws of Malaysia.³

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¹ 24 GOLDEN'S FEDERAL STATUTES [LAWS OF MALAYSIA] (Kuala Lumpur, International Law Book Services), at 467.

² *Id.*, §49, at 496-497.

³ *Id.* at 497.

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THE NETHERLANDS

Article 2 of the Constitution stipulates that extradition may take place only pursuant to a treaty.¹ Further regulations concerning extradition are laid down in the Law on Extradition.² Citizens of the Netherlands may be extradited only for the benefit of a criminal investigation and under the condition that if the citizen is convicted to a prison term he or she can serve the sentence in the Netherlands.³ Another condition for extradition is that the person to be extradited not be subject to the death penalty.⁴

¹The Constitution of the Kingdom of the Netherlands, art. 2, §3.

²Law of March 9, 1967, STAATSBLAD [official law gazette of the Netherlands] 139, as amended.

³*Id.* art. 4, §2.

⁴*Id.* art. 8.

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NIGERIA

Section 3 of the Extradition Act of 1967 as amended,^{*} prescribes two types of restrictions to extradition under Nigerian law, ie., absolute bars and conditional bars to extradition.

A: Absolute Bars to Extradition

1. A criminal fugitive cannot be surrendered to any foreign country if the Attorney General or a Nigerian court dealing with the case is satisfied that the offense for which extradition is sought is of a political character. Other absolute bars to extradition include the following:
2. Extradition is to prosecute or punish anyone because of race, religion, nationality, political opinions or where the request for such extradition is not in good faith or offends the interests of justice;
3. Extradition is adjudged by a Nigerian court or the Attorney General that the nature of the offense is trivial;
4. Extradition is considered way beyond a reasonable time for such a request to have been made from the time the crime was committed to the time the extradition request is lodged;

(In both the third and fourth instances, the court or the Attorney General would take into account all the circumstances in which the offense was committed. Once either has reached a conclusion that surrender of the fugitive would be unjust, oppressive or amount to cruel and unusual punishment, extradition is prohibited.)

5. When a fugitive criminal whether in Nigeria or abroad has been convicted of the offence for which extradition is sought or has been acquitted, extradition will not be ordered, more especially if the person sought is in Nigeria considered "not to be unlawfully at large";
6. When criminal proceedings are pending against such a person in Nigeria for the offense or offenses for which extradition is requested.

^{*} 8 LAWS OF THE FEDERATION OF NIGERIA, Ch.125, 5435- 5455 (1990).

B: Conditional Bars to Extradition

Conditional restrictions to extradition apply in the following cases:

1. A fugitive criminal who has been charged with an offence under the law of Nigeria which is not the same as the offence for which extradition has been requested or who is serving a sentence imposed for any such offence by a Nigerian court, precludes extradition temporarily until such time as the offender has been discharged, acquitted or until the sentence imposed by the Nigerian court has been served;
2. A criminal fugitive cannot be extradited to any foreign country under any circumstances, **unless** the Attorney General is satisfied that provision is made by the law of any such foreign country or that special arrangements have been made which ensure that as long as the offender has not had a reasonable opportunity to return to Nigeria, he will not be tried or be detained in that foreign country for any offense committed before extradition other than any extradition offenses that are proved by facts on which surrender is granted;
3. A criminal fugitive cannot be extradited in any circumstances until the end of 15 days from the day he is committed to prison to await his extradition. By and large the court of jurisdiction in these matters is the Magistrates Court. However, this jurisdiction is not exclusive.

Section 21 of the Extradition Act defines a "fugitive criminal," "fugitive" or [criminal fugitive] to mean the following:

Any person accused of an extradition offence within the jurisdiction of a country other than Nigeria or any person, who have been convicted of an extradition offence in a country other than Nigeria, is unlawfully at large before the expiration of a sentence imposed on him for that offence, being in either case, a person who is, or is suspected of being in Nigeria.

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THE REPUBLIC OF POLAND

Article 55 of the Constitution of the Republic of Poland of April 2, 1997,^{*} explicitly bans extradition of Polish citizens.

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^{*} Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [The Constitution of the Republic of Poland of April 2, 1997], *DZIENNIK USTAW* (Polish official gazette) No. 78, item 483 (1997). English translation of the constitution in: G.H. Flanz, *Constitutions of the Countries of the World, Poland, Booklet I*, enclosed (*Appendix*).

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RUSSIAN FEDERATION

The Constitution of the Russian Federation, which was adopted in 1993, states that a citizen of the Russian Federation may not be expelled from the Russian Federation or extradited to another state (art. 61). The Constitution also declares that the Russian Federation shall guarantee its citizens defense and protection outside its boundaries.

This constitutional guarantee repealed article 1.3 of the Russian Federation Law on Citizenship of 1991, which provided for a possibility of extradition on the basis of law or an international treaty of the Russian Federation. However, in a last few years several naturalized Russian citizens who kept double citizenship of Russia and their native former Soviet Union republic were extradited to the countries of their second citizenship. In all cases high-profiled political figures were involved.

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SWEDEN

Section 1 of the Swedish Extradition Law ¹ stipulates that a person who is accused, persecuted or convicted of a crime in a foreign country, and at the time is residing in Sweden, may be extradited to that country if the government so decides in conformity with the rules established in the Law. A focal point in the Swedish Extradition Law is that no person should be extradited for political reasons. ² Another principal condition for extradition is that the person who is to be extradited should not be subject to the death penalty.³

According to section 2 of the Law, a Swedish citizen may not be extradited to a foreign country. However, an exception has been made with respect to Nordic countries. In conformity with the provisions of a 1959 law entitled "On Extradition for Crime to Denmark, Finland, Iceland and Norway,"⁴ under certain circumstances a Swedish citizen may be extradited to other Nordic countries for a crime committed in those countries.

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¹ Svensk Författningssamling (SFS) 1957:668, as amended.

² *Id.* §6.

³ *Id.* §12:3.

⁴ SFS 1959:254, as amended.

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TURKEY

The Turkish Criminal Code prohibits the extradition of citizens. *

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* Law No. 765 of 1926, art. 9 in F. Coker & S. Kazanci eds. *TURKIYE CUMHURİYETİ KANUNLARI* 595 (Istanbul, 1971-).

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UNITED KINGDOM

The United Kingdom generally does not take into account nationality in determining whether a person can be extradited from the country. Its courts have long established that for purposes of extradition, British citizens (previously British subjects) are not to be treated differently from foreign nationals. In *In re Galway*,¹ a British subject was extradited to Belgium even though under a treaty the two countries were not bound to extradite their own subjects. The English High Court held that while the countries were not so bound, they retained the discretion to allow such extradition.

Nor has the United Kingdom taken a position under the European Convention on Extradition,² refusing to extradite its own nationals, as have certain other European nations. An English treatise offers the following view: "The refusal of many states to refuse the extradition of their own nationals appears archaic. These exemptions frustrate international co-operation in the trial and punishment of alleged criminals."³

As with the treaty with Belgium, several other extradition treaties to which the United Kingdom is party restrict or prohibit the surrender of fugitives from states of their nationality. In these cases, the discretion whether or not to return the offender is exercised by the Secretary of State.

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¹ [1896] 1 Q.B. 230, 235.

² The European Convention On Extradition Order 1990, S.I. 1990, No. 1507, art. 6 and Sch. 4.

³ Alun Jones, JONES ON EXTRADITION 131 (1995).