

EXTRADITION OF INDIVIDUALS FOR PROSECUTION OF CORRUPTION OFFENSES UNDER THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

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The fight against corruption stands as one of the foremost priorities of the international community in the contemporary world. Corruption undermines the foundations of legality, trust in government, and economic stability, exerting a negative impact on social and economic development. In this battle, international cooperation and mutual legal assistance play a pivotal role in effectively combating corrupt practices and bringing their perpetrators to justice.

Within the context of anti-corruption efforts, the United Nations Convention against Corruption (hereinafter referred to as the Convention) serves as a crucial international instrument, providing mechanisms for cooperation between states in various aspects of anti-corruption endeavors. One such aspect is mutual legal assistance in the extradition of individuals for criminal prosecution for corruption offenses.

This article aims to analyze mutual legal assistance under the UN Convention against Corruption, with a focus on the process of extraditing individuals for judicial prosecution for corruption-related crimes. The mechanisms and procedures provided for by the Convention will be examined, alongside challenges and prospects in the realm of international cooperation in combating corruption.

BACKGROUND ON THE UN CONVENTION AGAINST CORRUPTION

The United Nations Convention against Corruption (UNCAC) is an international document aimed at combating corruption by promoting the adoption and implementation of national and international measures to prevent and combat corruption. It was adopted by the United Nations General Assembly in December 2003 and entered into force in December 2005.

Some key aspects of the Convention include:

- **Prevention and Education:** Preventing corruption through education, information campaigns, and other measures.
- **Criminal Prosecution:** Ensuring effective criminal prosecution of corruption offenses, including measures for extradition and mutual legal assistance.
- **Asset Recovery Measures:** Facilitating the return of assets obtained through corruption to their countries of right.
- **International Cooperation:** Supporting international cooperation between states in combating corruption, exchanging informational, and sharing experientcs.

UNCAC also provides for a review mechanism, under which states parties undergo an assessment of their progress in implementing anti-corruption measures. The Convention is one of the most widely supported and adopted international documents dedicated to combating corruption, with 187 states parties currently.

INTERNATIONAL COOPERATION AND MUTUAL LEGAL ASSISTANCE.

Participating states cooperate on criminal justice matters in accordance with Articles 44-50 of

the Convention. When appropriate and consistent with their domestic legal systems, participating states consider the possibility of assisting each other in investigations and proceedings on civil and administrative matters related to corruption. In matters requiring adherence to the principle of mutual recognition of the relevant criminal act in international cooperation, this principle is considered observed regardless of whether the legislation of the requested participating state classifies the relevant act as a crime in the same category or describes it using the same terms as the requesting participating state, if the act constituting the offense in connection with which assistance is requested is recognized as punishable under the legislation of both participating states.

This article applies to offenses recognized as such in accordance with this Convention, provided that the person sought is on the territory of the requested State Party. This condition also implies that the act for which extradition is requested is punishable both in the requesting and requested countries under their domestic laws. Notwithstanding the provisions of paragraph 1 of this article, a State Party may permit the extradition of any person in connection with any of the offenses covered by this Convention, even if such offenses are not punishable under its own domestic law.

If a request for extradition concerns several separate offenses, at least one of which may lead to extradition under this article, and others cannot be a basis for extradition due to their low penalties, but they also relate to offenses recognized under the Convention, the requested State Party may apply this article to them as well.

Each offense to which this article applies is considered included in any existing extradition treaty between the State Parties as an offense that may serve as a basis for extradition. State Parties undertake to include such offenses in the list of extraditable offenses in any future extradition treaty between them. A State Party, if its legislation allows, when using this Convention as a basis for extradition, does not consider any of the offenses recognized under this Convention as political.

PROCEDURES AND CHALLENGES IN EXTRADITION

Point 5 of the article establishes that if a participating state requires a treaty for extradition and receives a request for extradition from another participating state with which it does not have such a treaty, it may use the present Convention as a legal basis for extradition for any offense regulated by this article.

Point 6 defines the procedure for a participating state requiring a treaty for extradition: a) Upon depositing the instrument of ratification, acceptance, or approval of the Convention or upon accession to it, this state notifies the Secretary-General of the United Nations of its intention to use the Convention as a legal basis for cooperation on extradition matters with other participating states. b) If it does not intend to use the Convention for cooperation on extradition, it seeks to conclude extradition treaties with other participating states for the application of this article.

Point 7 specifies that participating states not requiring a treaty for extradition recognize offenses regulated by this article as offenses for which extradition may be requested.

Paragraph 8 of the article establishes that the extradition process is conducted in accordance with the terms set forth in the internal legislation of the requested State Party or applicable extradition treaties. These terms may include requirements regarding minimum penalties associated with extradition, as well as grounds upon which the requested State Party may

refuse extradition.

Paragraph 9 of the article calls upon State Parties to make efforts to expedite extradition processes and simplify evidentiary requirements concerning offenses regulated by this provision, while ensuring compliance with their domestic legislation.

Paragraph 10 asserts that, provided compliance with domestic legislation and extradition treaties, the requested State Party may, upon request from the requesting State Party and upon verifying the urgency, detain the person whose extradition is requested or apply other relevant measures to ensure their presence during the extradition procedure.

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Paragraph 11 of the article instructs the State Party where the suspect is located, if refusal to extradite is based on their citizenship and the nature of the offense regulated by this provision, to promptly transfer the case to the competent authorities of the requesting State for further prosecution. These authorities conduct the proceedings in accordance with domestic legislation, as in the case of other serious offenses, cooperating on procedural and evidentiary matters to ensure the effectiveness of prosecution.

Paragraph 12 of the article asserts that if the legislation of a participating state allows for the extradition or transfer of its citizens only with the condition of their return for serving the sentence, then such conditional extradition or transfer, agreed upon by both the requesting and extraditing states, shall be considered as fulfilling the obligation set forth in paragraph 11 of the article. These provisions regulate the extradition procedure for individuals suspected of committing crimes between the participating states. Paragraph 11 imposes the obligation to transfer the case to the competent authorities of another state for prosecution if the refusal to extradite is based solely on the citizenship of the suspect. This ensures that individuals suspected of serious crimes cannot evade judicial prosecution due to their citizenship. Paragraph 12 clarifies that if a participating state applies conditional extradition or transfer, where the individual returns after serving the sentence, this also meets the requirements of paragraph 11. This promotes cooperation between participating states in ensuring fair and effective judicial prosecution.

Paragraph 13 of the article provides that if extradition of an individual for the enforcement of a sentence is denied due to their citizenship in the requesting participating state, then that state may consider the possibility of enforcing the sentence or its remaining part upon the request of the state that issued the sentence, provided that its internal legislation and requirements are adhered to.

Point 14 ensures that any individual subject to criminal liability under matters governed by this article will be guaranteed fair treatment at all stages of the legal process. This includes the full exercise of all rights and guarantees provided by the laws of the state where the individual is located. The articles aim to ensure the rights of a fair legal process and the effective application of extradition laws among participating states. Point 14 underscores the necessity of adhering to principles of fair legal process for all individuals covered by this article, promoting the protection of their rights and interests throughout legal proceedings.

Point 15 of this Convention excludes the possibility of interpreting its provisions as obligating

the extradition of individuals if the requested State Party has compelling reasons to believe that the extradition request is aimed at prosecuting or punishing the individual based on reasons such as their gender, race, religion, nationality, ethnic origin, or political beliefs, or if the extradition could harm the individual's position for any of these reasons.

Point 16 prohibits State Parties from refusing extradition solely on the grounds that the crime is also related to tax matters.

Point 17 underscores the necessity of consultations between the requested and requesting State Parties before deciding on extradition refusal, to ensure the requesting State has an adequate opportunity to present its arguments and information regarding the facts presented in its request.

The participating states strive to enter into bilateral and multilateral agreements or arrangements with the aim of implementing or enhancing the efficiency of extradition.

The effective implementation of mutual legal assistance and extradition processes as provided by the UN Convention against Corruption is essential for the global fight against corruption. While the Convention provides robust mechanisms and procedures, practical challenges remain, including differences in legal systems, evidentiary standards, and political considerations. Continued international cooperation and dialogue are necessary to overcome these challenges and ensure that corrupt individuals are held accountable, thus reinforcing the rule of law and fostering trust in public institutions.

The findings of this research underscore the importance of strengthening international legal frameworks and enhancing practical collaboration between states. These efforts are critical for ensuring that corruption does not go unpunished and that assets acquired through corrupt practices are recovered and returned to their rightful owners. Practicing lawyers, law enforcement agencies, and the academic community can benefit from the insights provided in this study to further the effectiveness of international legal cooperation in combating corruption.

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