

Extradition (Croatia) Regulations 2004 2004 No. 339

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 339

Issued by the authority of the Minister for Justice and Customs

Extradition Act 1988

Extradition (Republic of Croatia) Repeal Regulations 2004

Extradition (Croatia) Regulations 2004

Section 55 of the *Extradition Act 1988* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5 of the Act defines an 'extradition country' to include a country that is declared by the regulations to be an extradition country. Paragraph 11(1)(b) of the Act provides that the regulations may make provision for application of the Act subject to certain limitations, conditions, exceptions or qualifications.

The purpose of the Regulations is to:

- Terminate the application of the Act to Croatia subject to the limitations, conditions, exceptions or qualifications provided in the *Extradition (Republic of Croatia) Regulations 2003*; and
- re-establish extradition arrangements with Croatia under regulations for that specific purpose, enabling Australia to consider extradition requests received from Croatia under a new extradition arrangement with Croatia.

The Act applies the modern 'no evidence' extradition procedure. Under this procedure countries are not required to present evidence establishing a *prima facie* case against the person sought.

The arrangements under the repealed *Extradition (Republic of Croatia) Regulations 2003* enabled Australia to consider extradition requests from Croatia where the requests complied with the requirements of the Treaty between the United Kingdom and Serbia for the Mutual Surrender of Fugitive Criminals done at Belgrade on 6 December 1900 (the Treaty). The Treaty was brought into operation between Australia and Croatia by an exchange of Third Person Notes on 2 and 3 September 1996. A copy of the Treaty was set out in the *Extradition (Republic of Croatia) Regulations 2003*. The Treaty required Croatia to present evidence sufficient to establish a *prima facie* case against the wanted person in each extradition request made to Australia.

The *Extradition (Republic of Croatia) Repeal Regulations 2004* ended this requirement, and the *Extradition (Croatia) Regulations 2004* re-established extradition arrangements with Croatia under regulations made without reference to the Treaty, enabling Australia to consider extradition requests received from Croatia under the 'no evidence' extradition procedure.

Extradition to Croatia under the *Extradition (Croatia) Regulations 2004* operates in accordance with the Act, subject to a modification, namely that an arrested person may apply to a magistrate for release after 60 days if a request for his or her extradition has not been received.

The standard period under the Act is 45 days. Modification to apply a 60 day period is common and has been included, for example, in extradition agreements with Brazil, Chile, Hungary, Mexico, Paraguay, South Korea and the United States.

Extradition under the Regulations is subject to the various safeguards set out in the Act. For example, extradition would not be permitted where the fugitive was sought for or in connection with her or his race, religion, nationality or political opinions or would be tried, sentenced or detained for a political or military offence. In addition, the Attorney-General would retain a broad discretion to refuse an extradition request by Croatia in any particular case.

This action is consistent with the provisions of the Act. Similar 'non-treaty Regulations' currently provide that the Act applies to Denmark, Estonia, Iceland, Japan, Latvia, the Marshall Islands, Thailand, Cambodia, Lebanon, Jordan, the United Kingdom and Canada.

The Regulations commenced on the date of their notification in the *Gazette*.