

[SPANISH TEXT — TEXTE ESPAGNOL]

TRATADO DE EXTRADICIÓN Y ASISTENCIA JUDICIAL EN MATERIA PENAL ENTRE EL REINO DE ESPAÑA Y LA REPÚBLICA ARGENTINA

El Reino de España y la República Argentina,

Conscientes de los profundos vínculos históricos que unen a ambas Naciones y deseando traducirlos en instrumentos jurídicos de cooperación en todas las áreas de interés común y entre ellas las de cooperación judicial.

Han resuelto concluir un Tratado de Extradición y Asistencia Judicial en materia penal en los siguientes términos:

T I T U L O I

EXTRADICION

ARTICULO 1º

Las Partes contratantes se obligan a entregarse recíprocamente, según las reglas y condiciones establecidas en los artículos siguientes, las personas a quienes las autoridades judiciales de una de las Partes persiguieren por algún delito o buscaren para la ejecución de una pena o medida de seguridad que consista en privación de libertad.

[TRANSLATION — TRADUCTION]

TREATY¹ CONCERNING EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE KINGDOM OF SPAIN AND THE ARGENTINE REPUBLIC

The Kingdom of Spain and the Argentine Republic,

Conscious of the deep historical ties uniting the two nations and desiring to reflect them in juridical instruments of cooperation in all areas of common interest, including judicial assistance,

Have decided to conclude a Treaty concerning Extradition and Judicial Assistance in Criminal Matters as follows:

TITLE I

EXTRADITION

Article 1

The Contracting Parties undertake reciprocally to extradite, subject to the terms and conditions specified in the following articles, persons being prosecuted by the judicial authorities of one of the Parties for an offence, or being sought in order to serve a sentence or security measure involving deprivation of liberty.

Article 2

1. Acts which under the laws of both Parties are punishable by deprivation of liberty or security measures involving deprivation of liberty for a term of not less than one year shall give rise to extradition.

2. If extradition is requested for the enforcement of a sentence, the part of the term or security measure remaining to be served must be not less than six months.

3. If the request refers to several acts, some of which fail to meet the requirements of paragraphs 1 and 2, the requested Party may also grant extradition under those paragraphs.

Article 3

Punishable acts covered by multilateral agreements to which both countries are parties shall also give rise to extradition in accordance with this Treaty.

Article 4

1. In matters involving taxation, rates, customs and exchange, extradition shall be granted, under the provisions of this Treaty, if the acts meet the requirements of article 2.

¹ Came into force on 15 July 1990, i.e., 30 days after the exchange of the instruments of ratification, which took place at Madrid on 15 June 1990, in accordance with article 44 (2).

2. Extradition may not be denied on the grounds that the laws of the requested Party do not impose the same type of tax or charges or do not contain the same type of regulations in these matters as the laws of the requesting Party.

Article 5

1. Extradition shall not be granted for offences considered to be of a political nature or connected with offences of that kind. The mere allegation of a political purpose or motivation in the commission of an offence shall not, in itself, qualify it as an offence of a political nature.

For the purposes of this Treaty, the following shall in no case be considered political offences:

(a) An attempt to assassinate a head of State or Government or a member of his family;

(b) Acts of terrorism;

(c) War crimes and crimes against the peace and security of mankind.

2. Extradition shall likewise not be granted if the requested Party has well-founded reasons for believing that the request for extradition has been submitted for the purpose of prosecuting or punishing the person sought for reasons of his race, religion, nationality, or political opinions, or that the person's situation may be prejudiced for any of those reasons.

Article 6

Extradition for offences that are strictly military shall be excluded from the scope of this Treaty.

Article 7

1. Where the person sought is a national of the requested Party, the latter may refuse to grant extradition under its own laws. Nationality shall be determined at the time when the decision on extradition is taken, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

2. Where the requested Party refuses to grant the extradition of one of its nationals for reasons of nationality, it shall, at the petition of the requesting Party, refer the matter to the competent authorities so that they may initiate judicial proceedings against the person. To that end, all documents, information and articles relating to the offence may be transmitted free of charge through the channel provided for in article 15.

The requesting Party shall be informed of the decision taken on its request.

Article 8

None of the provisions of this Treaty shall be interpreted as a limitation on asylum, once it has been granted. Therefore, the requested Party may also refuse to extradite a person granted asylum under its own laws.

If extradition is denied for this reason, the provisions of paragraph 2 of the previous article shall apply.

Article 9

Extradition shall be denied:

(a) If, under its laws, the requesting Party is not competent to investigate the offence which gave rise to the extradition request.

(b) If the person sought has been sentenced or is to be tried by a court of special or ad hoc jurisdiction in the requesting Party.

(c) If, under the laws of either Party, liability to penalty or criminal action for the offence giving rise to the extradition request has been extinguished.

(d) If the person sought has been tried in the requested Party for the act giving rise to the extradition request.

Article 10

Extradition shall not be granted if the acts for which it is requested are punishable by the death penalty or life imprisonment, or by penalties or security measures involving bodily assault or exposure to inhuman or degrading treatment.

However, extradition may be granted if the requesting Party provides sufficient guarantees that the person to be expedited will not be executed and that the maximum sentence to be served will be the most severe short of life imprisonment, or that he will not be subjected to punishment involving bodily assault or to inhuman or degrading treatment.

Article 11

Extradition may be denied:

(a) If the courts of the requested Party are competent, under its own laws, to investigate the offence giving rise to the extradition request. The requested Party may, however, grant extradition if it has decided, or should decide, not to begin proceedings or to terminate any proceedings that have been initiated.

(b) If the offence was committed outside the territory of the requesting Party and the laws of the requested Party do not permit the prosecution of an offence of that type committed outside its territory.

(c) If the person sought is under 18 years of age at the time the extradition request is submitted and has ties in the requested Party, and that Party believes that extradition could be detrimental to his integration into society, without prejudice to the adoption of the most appropriate measures provided under the laws of the requested Party.

Article 12

1. If the person sought has been sentenced by default, extradition shall (not) be granted (unless) the requesting Party provides guarantees that his defence will be heard and that he will be given the appropriate legal resources.

2. If extradition is granted, the requesting Party may carry out the sentence with the express consent of the convicted person.

Article 13

1. In order for a person who has been extradited to be tried, sentenced or subjected to any type of restriction of his personal liberty for acts prior to and different from those which were the grounds for his extradition, the requesting Party shall request the appropriate authorization from the requested Party. The latter may require the requesting Party to submit the documents listed in article 15.

Authorization may be granted even if the requirements of article 2, paragraphs 1 and 2, have not been met.

2. Such authorization shall not be required if the person who has been extradited gives his express consent, or, although free to leave the territory of the State to which he was handed over, remained there for more than 30 days or left the territory and subsequently returned.

Article 14

Where the legal classification of the act with which he is charged is modified during the proceedings, the person who has been extradited shall be prosecuted or sentenced only to the extent that the constituent elements of the offence under the new classification would have warranted extradition.

Article 15

1. The request for extradition shall be made in writing and transmitted through the diplomatic channel. However, either Party may inform the other of the appointment of a central authority competent to receive and transmit requests for extradition.

2. The extradition request shall be accompanied by:

(a) A copy or transcript of the sentence, committal order, detention order or any other similar decision under the laws of the requesting Party, with a summary statement of the acts, location and date of occurrence, and, in the case of a sentence, certification that it has not been completely served and an indication of the time remaining to be served.

(b) As much information as is available on the identity, nationality and residence of the person sought and, if possible, his photograph and fingerprints.

(c) A copy or transcript of the legal texts which classify and sanction the offence and state the applicable penalties or security measures, of those which establish the competence of the requesting Party to try the case and of those referring to the prescription of actions and of the penalty or security measure.

(d) The guarantees regarding the application of the penalties or security measures referred to in article 10, if necessary.

Article 16

1. If the information or documents sent with the request for extradition are incomplete or defective, the requested Party shall so inform the requesting Party as soon as possible so that the requesting Party may correct, within the time-limit established by the requested Party, the omissions or errors noted.

2. If, owing to exceptional circumstances, the requesting Party is unable to meet this deadline, it may apply for an extension from the requested Party.

Article 17

The requested Party may grant extradition without observing the formalities established by this Treaty if the person sought, with the benefit of legal assistance, gives his express consent after having been informed of his right to extradition proceedings and the protection such proceedings afford him.

Article 18

1. The requested Party shall communicate to the requesting Party, through the channel provided for in article 15, its decision concerning the extradition.