

No. 31563

**SPAIN
and
CHILE**

**Treaty concerning extradition and judicial assistance in
criminal matters. Signed at Santiago on 14 April 1992**

Authentic text: Spanish.

Registered by Spain on 30 January 1995.

**ESPAGNE
et
CHILI**

**Traité d'extradition et d'entraide judiciaire en matière
pénale. Signé à Santiago le 14 avril 1992**

Texte authentique : espagnol.

Enregistré par l'Espagne le 30 janvier 1995.

[TRANSLATION — TRADUCTION]

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

The Kingdom of Spain and the Republic of Chile,

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 cooperation,

Bearing in mind the General Treaty of Cooperation and Friendship between the Kingdom of Spain and the Republic of Chile signed in Santiago, Chile, on 19 October 1990,²

Have decided to conclude a treaty concerning extradition and judicial assistance in criminal matters as follows:

TITLE I

EXTRADITION

Article 1

OBLIGATION TO EXTRADITE

The Contracting Parties undertake reciprocally to extradite, subject to the terms and conditions specified in the following articles, persons against whom criminal proceedings have been initiated or who are being sought in order to serve a sentence involving deprivation of liberty.

Article 2

EXTRADITABLE OFFENCES

1. Extradition shall be granted in respect of offences punishable under the laws of both Parties by deprivation of liberty for at least one year.
2. If extradition is requested for the enforcement of a sentence, at least six months of such sentence must remain to be served.
3. If the request refers to several offences, some of which do not meet the requirements of paragraphs 1 and 2 with respect to the length of the sentence, the requested Party may also grant extradition under those paragraphs.

¹ Came into force on 21 January 1995, i.e., 30 days after the exchange of the instruments of ratification, which took place at Madrid on 22 December 1994, in accordance with article 44 (2).

² United Nations, *Treaty Series*, vol. 1653, No. I-28441.

Article 3

MULTILATERAL CONVENTIONS

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

Article 4

FISCAL OFFENCES

In matters involving taxes, duties, customs and foreign currency, extradition may not be denied on the grounds that the laws of the requested Party do not impose the same type of tax or duty or do not contain the same type of regulations in these matters as the laws of the requesting Party, if the offences meet the requirements of article 2.

Article 5

POLITICAL OFFENCES

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, characterize 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 on the life, physical integrity or liberty of a head of State or Government or of a member of his family;

(b) Acts of terrorism;

(c) War crimes and crimes which, under international law, are crimes against the peace and security of mankind.

2. Extradition shall likewise not be granted if the requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of his race, religion, nationality, or political opinion, or that that person's position may be prejudiced for any of those reasons.

Article 6

MILITARY OFFENCES

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

Article 7

EXTRADITION OF NATIONALS

1. Where the person sought is a national of the requested Party, the latter may refuse to grant extradition under its own law. Nationality shall be determined at the

time of the decision concerning extradition, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

2. Where the requested Party refuses to grant the extradition for the reasons stated in paragraph 1, 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 concerned. To that end, all documents, information and property 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 result of its request.

Article 8

EXTRADITION AND ASYLUM

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 law.

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

Article 9

MANDATORY GROUNDS FOR REFUSAL

Extradition shall be denied:

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

(b) If the person sought has been sentenced or would be liable to be tried in the requesting Party by an extraordinary or *ad hoc* court or tribunal;

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

(d) If the person sought has been tried in the requested Party or in a third State for the offence which gave rise to the request for extradition.

Article 10

DEATH PENALTY AND LIFE IMPRISONMENT

If the offences for which extradition is requested are punishable by the death penalty or life imprisonment, extradition shall be granted only if the requesting Party gives sufficient assurances that the person sought will not be executed and that the maximum sentence to be served will be the most severe short of life imprisonment.

Article 11

OPTIONAL GROUNDS FOR REFUSAL

Extradition may be refused:

(a) If the courts of the requested Party are competent, under its own law, to investigate the offence giving rise to the request for extradition. The requested Party

may, however, grant extradition if it has decided, or should decide, either not to institute proceedings or to terminate any proceedings that have been instituted;

(b) If the offence was committed outside the territory of the requesting Party and the law of the requested Party does 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 when the request for extradition is submitted and is domiciled or resident 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 law of the requested Party.

Article 12

JUDGEMENTS RENDERED “IN ABSENTIA”

If the person sought has been convicted *in absentia*, extradition shall not be granted unless the requesting Party gives assurances that the minimum rights of defence generally accorded to any person accused of an offence were respected in the trial in which he was convicted.

Article 13

RULE OF SPECIALTY

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 for which he was extradited, the requesting Party shall request the appropriate authorization from the requested Party. The latter may require the requesting Party to submit the documents mentioned in article 15.

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

2. Such authorization shall not be required if the person who has been extradited gives his express consent or, having had an opportunity to leave voluntarily the territory of the State to which he has been surrendered, has remained there for more than 30 days or has returned to that territory after leaving it.

Article 14

CHANGE OF DESCRIPTION

Where the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced insofar as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 15

PROCEDURE

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