

No. 23164

**SPAIN
and
DOMINICAN REPUBLIC**

**Treaty concerning extradition and judicial assistance in
criminal matters. Signed at Madrid on 4 May 1981**

Authentic text: Spanish.

Registered by Spain on 30 November 1984.

**ESPAGNE
et
RÉPUBLIQUE DOMINICAINE**

**Traité relatif à l'extradition et à l'entraide judiciaire en
matière pénale. Signé à Madrid le 4 mai 1981**

Texte authentique : espagnol.

Enregistré par l'Espagne le 30 novembre 1984.

[TRANSLATION — TRADUCTION]

**TREATY¹ BETWEEN SPAIN AND THE DOMINICAN REPUBLIC
CONCERNING EXTRADITION AND JUDICIAL ASSISTANCE
IN CRIMINAL MATTERS**

The King of Spain and

The President of the Dominican Republic,

Conscious of the deep historical roots that bind both nations and interested in achieving the closest and most effective co-operation between the two countries in all areas of common interest and in particular as regards the administration of justice,

Have decided to conclude a Treaty concerning extradition and judicial assistance in criminal matters and, for that purpose, have appointed as their Plenipotentiaries,

The King of Spain His Excellency Mr. José Pedro Pérez-Llorca, Minister for Foreign Affairs;

The President of the Dominican Republic His Excellency Mr. Manuel Tavares Espaillat, Secretary of State for Foreign Affairs,

who, having exchanged their full powers, found in good and due form, have agreed 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 against whom criminal proceedings have been instituted or who are required to serve a sentence involving deprivation of liberty imposed judicially as the result of a punishable act committed in their territory or in the territory over which the requesting Party has jurisdiction.

Article 2. 1. Acts which under the laws of both Parties are punishable by deprivation of liberty for a maximum term of more than two years shall give rise to extradition.

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

Article 3. Punishable acts covered by multilateral conventions to which both countries are Parties shall also give rise to extradition in accordance with this Treaty.

Article 4. 1. Extradition shall not be granted for offences considered by the requested Party to be of a political nature or connected with offences of that kind. For the purposes of this Treaty, the murder or other offence against the life, physical integrity or liberty of a Head of State or Government or a member of his family or the constituted authority shall not be considered a political offence.

¹ Came into force on 20 November 1984, i.e., 60 days after the date of the exchange of the instruments of ratification, which took place at Santo Domingo on 21 September 1984, in accordance with article 42 (2).

2. Extradition shall likewise not be granted if the requested Party has well-founded reasons for believing that the request for extradition for an offence under ordinary law has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinions, or that the person's position may be prejudiced for any of these reasons.

3. For the purposes of extradition between the two Contracting Parties, terrorist offences shall not be regarded as offences of a political nature or as being connected with offences of that kind or as offences inspired by political motives, and the following in particular shall be regarded as terrorist offences:

- (a) Offences covered by the Convention for the suppression of unlawful seizure of aircraft, signed at The Hague on 16 December 1970;¹
- (b) Offences covered by the Convention for the suppression of unlawful acts against the safety of civil aviation, signed at Montreal on 23 September 1971;²
- (c) Serious offences consisting of an attack on the life, physical integrity or liberty of persons;
- (d) Offences involving kidnapping, the taking of hostages or arbitrary imprisonment;
- (e) Offences involving the use of bombs, grenades, rockets, automatic weapons, or letters or parcels concealing explosives in cases where such use represents a danger to persons;
- (f) The attempt to commit any of the foregoing offences or the participation as partner or accomplice of any person committing or intending to commit such offences.

Article 5. If the Contracting Party in whose territory the person presumed guilty or responsible for an offence covered by article 4, paragraph 3, is discovered does not accede to a request for extradition, it shall submit the case to its competent authorities for criminal prosecution. The requested State shall act in accordance with its legislation.

Article 6. Extradition for offences that are strictly military shall be excluded from the scope of this Treaty.

Article 7. 1. When a person whose extradition is sought is a national of one of the Contracting Parties, the question of extradition shall be decided in accordance with the legislation of the law of the requested State.

2. In cases where extradition is refused on the ground that the person sought is a national of the requested State, the person may be tried by the courts of that State at the request of the injured party if the act for which he is to be prosecuted is an offence under the law of both States.

3. In the foregoing situation, the requested State shall communicate its decision to refuse extradition, together with the reasons therefor, to the requesting State and shall notify that State of any proceedings instituted against the person sought.

¹ United Nations, *Treaty Series*, vol. 860, p. 105.

² *Ibid.*, vol. 974, p. 177, and vol. 1217, p. 404.

Article 8. The requested Party may refuse the request for extradition when, according to its own legislation, the offence in respect of which extradition is requested should be dealt with by its own courts.

Article 9. Extradition shall not be granted if the person has already been tried by the authorities of the requested Party for the same acts as gave rise to the request.

Article 10. If, under the law of either of the Parties, criminal liability has been extinguished owing to lapse of time or for some other reason, extradition shall not be granted.

Article 11. If the person sought has been sentenced by default, extradition shall be granted only if the requesting Party gives guarantees that his defence will be heard and that he will be given the appropriate legal resources.

Article 12. Extradition shall not be granted if the acts for which it is requested are punishable by the death penalty or imprisonment for life, unless the requested State first receives sufficient guarantees from the requesting State, through the diplomatic channel, that it will not impose either of those penalties on the person sought, or that if such penalties are imposed their execution will take the form of the maximum penalty immediately below imprisonment for life. If such guarantees are not obtained from the requesting State, the requested State shall try the punishable acts as though they had occurred in its territory.

Article 13. The person extradited may not be tried in the territory of the requesting Party by a special and extraordinary court. Extradition shall not be granted for that purpose or for the execution of a penalty imposed by courts of that kind.

Article 14. The request for extradition shall be transmitted through the diplomatic channel.

Article 15. The request for extradition shall be accompanied by the following documents, duly authenticated, in the form prescribed by the laws of the requesting State:

- (a) A statement and particulars of the acts for which extradition is requested, indicating as precisely as possible the time and place of perpetration and their legal characterization;
- (b) The original or a certified copy of the sentence, arrest warrant, detention order or other judicial decision having the same force under the law of the requesting Party demonstrating the existence of the offence and providing reasonable evidence that it was perpetrated by the person sought;
- (c) The text of the legal provisions concerning the offence or offences in question, the corresponding penalties and the length of the periods of limitation;
- (d) Information by means of which the identity and nationality of the person sought and, if possible, his whereabouts can be established.

Article 16. If the information or documents sent with the request for extradition are incomplete or defective, the requested Party shall inform the requesting Party of the omissions or errors so that they may be remedied.

Article 17. 1. A person delivered up for extradition shall not be prosecuted, tried or held in custody for the purpose of enforcing a sentence for an act

prior to and different from that for which extradition has been granted, except in the following cases:

- (a) If the requested State gives its consent in response to a request submitted to that effect, which shall be accompanied by the documents provided for in article 15 and by a judicial record containing the statements of the defendant;
- (b) If the defendant, although free to leave the territory of the Party to which he was handed over, has remained in that territory for more than 45 days without taking advantage of that opportunity.

2. Without prejudice to the provisions of paragraph 1, the requesting Party may take any measures that are necessary under its legislation to interrupt the period of limitation.

3. If the legal characterization of the act with which he is charged is altered in the course of the proceedings, the person extradited shall be prosecuted or tried only to the extent that the constituent elements of the offence under the new characterization would have warranted extradition.

Article 18. Except in the case provided for in article 17, paragraph 1 (b), re-extradition to a third State shall not be granted without the consent of the Party which agreed to the extradition. The latter may require the prior transmittal of the documentation provided for in article 15, together with a document containing the statement of the person sought in which he gives his reasons for consenting or objecting to the re-extradition.

Article 19. 1. In urgent cases, the competent authorities of the requesting Party may apply for the provisional arrest of the person sought. The application for provisional arrest shall contain an indication of the existence of one of the decisions mentioned in article 15 (b) and of the intention to submit a formal request for extradition. It shall also specify the offence, the time and place of perpetration, and information establishing the identity and nationality of the person sought.

2. The application for provisional arrest shall be transmitted to the competent authorities of the requested Party by the fastest possible means, using any method of communication, provided that it affords evidence in writing or is accepted by the requested Party.

3. Upon receipt of the application referred to in paragraph 1, the requested Party shall take measures leading to the arrest of the person sought. The requesting Party shall be informed of the outcome of its application.

4. A provisional release may be granted, with or without surety, provided that the requested Party takes whatever steps it deems necessary to prevent the escape of the person sought.

5. The provisional arrest may be terminated if, within 45 days, the requested Party has not received the request for extradition and the documents referred to in article 15. In no circumstances may the provisional arrest last more than 60 days.

6. Release shall not impede the normal course of the extradition process if the request and the documents referred to in article 15 are received subsequently.

Article 20. If extradition is requested concurrently by one of the Parties and by other States, either for the same offence or for different offences, the

requested Party shall take its decision having regard to the circumstances and in particular to the existence of other treaties binding upon the requested Party, the relative seriousness of each offence, the place where the offence was committed, the dates of the requests, the nationality of the person sought and the possibility of subsequent extradition.

Article 21. 1. The requested Party shall communicate its decision concerning the request for extradition to the requesting Party through the diplomatic channel.

2. Reasons shall be given for any total or partial refusal to comply.

3. If the request for extradition is granted, the Parties shall agree on the way in which the person sought is to be surrendered, which surrender is to occur within 60 days of the date of receipt by the requesting Party of the communication referred to in paragraph 1, save in the case of the interruptions provided for in article 22.

4. The person sought shall be released if he has not been taken over within the said period and the requesting Party may not subsequently request extradition for the same offence.

Article 22. 1. The requested Party may, after taking a decision on the request for extradition, defer surrender of the person sought so that he may be tried or, if he has already been sentenced, so that he may serve in its territory the sentence imposed for an offence other than that for which extradition has been granted.

2. Instead of deferring surrender, the requested Party may temporarily hand over the person sought, if its legislation so permits, on such terms as the two Parties may establish by mutual agreement.

3. Surrender may likewise be deferred if the state of health of the person sought is such that moving him might endanger his life or aggravate his condition.

Article 23. 1. If required by the requesting Party, the requested Party shall, to the extent permitted by its legislation and without prejudice to the rights of third parties, seize and hand over articles:

(a) Which may serve as evidence;

(b) Which have been acquired as a result of the offence and have been found in the possession of the person sought at the time of his arrest or have been discovered subsequently.

2. The articles referred to in the foregoing paragraph shall be handed over even if extradition, having been granted, cannot be carried out because of the death, disappearance or escape of the person sought.

3. If the articles referred to in paragraph 1 are liable to seizure in the territory of the requested Party in connection with pending criminal proceedings, that Party may temporarily retain them or hand them over on condition that they are returned.

4. When the requested Party or a third party has rights to articles that have been handed over to the requesting Party for the purpose of criminal proceedings, pursuant to the provisions of this article, they shall be returned to the requested Party as soon as possible and without any charge.

Article 24. 1. Provided that it does not jeopardize the maintenance of law and order, conveyance in transit through the territory of either Party of a person who is not a national of that Party and who is being handed over to the other Party by a third State shall be permitted upon presentation through the diplomatic channel, of a certified copy of the decision granting the extradition.

2. The authorities of the transit State shall have custody of the defendant as long as he remains in its territory.

3. The requesting Party shall reimburse the transit State for any expenses it may incur in this connection.

Article 25. Expenses occasioned by extradition in the territory of the requested Party shall be borne by that Party, except for those relating to the transport of the person sought, which shall be borne by the requesting Party.

TITLE II. JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

Article 26. 1. The Parties undertake to provide each other with mutual assistance, in accordance with the provisions of this Treaty, in the conduct of inquiries and formalities relating to all criminal proceedings instituted in connection with offences which fall within the jurisdiction of the requesting Party at the time when the assistance is requested.

2. This Treaty shall not apply to purely police measures or to military offences, except where they constitute breaches of ordinary law.

3. Assistance may be provided in the interests of justice even in the case of acts not punishable under the law of the requested Party. Nevertheless, assistance may be requested for the execution of measures to seize articles and to search persons and premises only in the case of acts which are also considered offences under the legislation of the requested Party.

Article 27. 1. Judicial assistance may be refused:

- (a) If, in the opinion of the requested Party, the request relates to political crimes or to offences connected with crimes of this kind;
- (b) If the requested Party considers that compliance with the request would jeopardize the maintenance of law and order.

2. In no event shall the request be regarded as referring to political crimes or to offences connected with crimes of this kind when judicial assistance is requested in the cases envisaged in article 4, paragraph 3.

Article 28. A request for assistance shall be complied with in accordance with the legislation of the requested Party and shall be confined to the formalities specifically requested.

Article 29. 1. The requested Party shall execute letters rogatory relating to criminal proceedings addressed to it by the judicial authorities or the Public Prosecutor of the requesting Party and issued for the purpose of preliminary inquiry, procedural action or communication.

2. If the letters rogatory are issued for the purpose of obtaining procedural judicial orders, pieces of evidence and any kind of documents, in general, the requested Party may simply transmit certified copies or photocopies, unless the requesting Party specifically requests the originals.

3. The requested Party may refuse to send requested articles, procedural judicial orders or original documents if its legislation does not permit it to provide them or if it needs them for criminal proceedings that have already been instituted.

4. Articles or documents which have been transmitted in execution of letters rogatory shall be returned as soon as possible, unless the requested Party waives that requirement.

Article 30. At its express request, the requesting Party shall be informed of the date and place of execution of the letters rogatory.

Article 31. 1. The requested Party shall proceed to serve the judicial decisions or documents relating to judicial proceedings sent to it for that purpose by the requesting Party.

2. Service may be effected simply by delivery of the document to the person named therein or, if the requesting Party so requests, in any manner prescribed by the legislation of the requested Party, or in any other manner compatible with that legislation.

3. Service of documents shall be confirmed by a receipt, dated and signed by the person named, or by a certificate from the competent authority stating that service was effected and indicating the manner and date thereof. One or the other of these documents shall be transmitted to the requesting Party and, if service cannot be effected, the reasons therefor shall be given.

4. Requests for the summoning of a person charged with an offence, a witness or an expert to appear before the authorities of the requesting Party need not be acted on if they are received less than 45 days before the date set for the appearance. The requesting Party must take that time-limit into account when formulating its request.

Article 32. 1. If the requesting Party wishes a person who is in the territory of the other Party to appear as a witness or expert, the last-mentioned Party shall serve the summons as requested, but any warning clauses or penalties prescribed in the case of failure to appear shall not be given effect.

2. The request referred to in the foregoing paragraph shall indicate the amount of the travel, subsistence and other allowances to be paid to the witness or expert.

Article 33. If the requesting Party deems it particularly necessary for a witness or expert to appear in person before its judicial authorities, it shall mention the fact in the request for a summons.

Article 34. 1. No person of whatsoever nationality who, in response to a summons, appears before the judicial authorities of the requesting Party as a witness or expert may be prosecuted or detained in that State by reason of an act committed or a conviction pronounced prior to his departure from the territory of the requested Party.

2. The immunity provided for in the foregoing paragraph shall cease if the witness or expert remains in the territory of the requesting Party for more than 45 days after the date on which his presence ceases to be required by the judicial authorities of that Party.

Article 35. 1. If, in a criminal matter, one of the two Parties deems it necessary for a person held in custody in the territory of the other Party to appear before its judicial authorities as a witness or for purposes of confrontation, it shall make a request to that effect. The request shall be complied with, provided that the person concerned consents and the requested Party considers that no important reasons exist for not doing so.

2. The requesting Party shall be obliged to keep the surrendered person in custody and shall return him as soon as the formality for which the surrender was requested has been accomplished.

3. Any expenses arising from the application of this article shall be borne by the requesting Party.

Article 36. The Parties shall inform each other of any sentences which the judicial authorities of either Party have imposed on nationals of the other Party.

Article 37. When one Party requests extracts from the judicial records of a person, specifying the reason for the request, those records shall be transmitted to it unless this is prohibited under the legislation of the requested Party.

Article 38. 1. Requests for assistance shall contain the following particulars:

- (a) The name of the authority which issued the document or rendered the decision;
- (b) The nature of the document or decision;
- (c) A precise description of the assistance being requested;
- (d) The offence to which the proceedings relate;
- (e) Wherever possible, the identity and nationality of the accused or convicted person;
- (f) The name and address of the intended recipient.

2. Letters rogatory issued for a purpose other than the mere service of documents shall also specify the charges and contain a brief statement of the facts.

3. If the requested Party does not comply with a request for assistance, it shall return the request stating the reasons for non-compliance.

Article 39. 1. For the purpose of the matters specified in this Title, each Party shall designate the authorities empowered to send and receive communications concerning assistance in criminal matters.

2. Notwithstanding the foregoing, the Parties may in any case use the diplomatic channel or instruct their consuls to execute the formalities permitted under the legislation of the receiving State.

TITLE III. FINAL PROVISIONS

Article 40. In the application of this Treaty, in all matters relating to the extradition itself, the documents transmitted shall comply with the certification requirements set forth in article 15 of this Treaty, without need for legalization.

Article 41. Any difficulty which may arise in the application or interpretation of this Treaty shall be settled through the diplomatic channel.

Article 42. 1. This Treaty is subject to ratification. The exchange of the instruments of ratification shall take place in the city of Santo Domingo as soon as possible.

2. This Treaty shall enter into force 60 days after the date of the exchange of instruments of ratification and shall remain in force until either of the Parties denounces it. It shall cease to have effect six months after the date on which the denunciation was received.

3. When this Treaty enters into force, the Treaty of 14 October 1874¹ shall be abrogated without prejudice to the provisions of paragraph 5.

4. Requests for extradition made after the entry into force of this Treaty shall be governed by its clauses, regardless of the date on which the offence was committed.

5. Requests for extradition made prior to the entry into force of this Treaty shall continue to be dealt with and shall be resolved in accordance with the provisions of the Treaty of 14 October 1874.

IN WITNESS WHEREOF, the Plenipotentiaries sign this Treaty, done at Madrid, in two equally authentic original copies, on 4 May 1981.

For the Government
of Spain:
[Signed]

JOSÉ PEDRO PÉREZ-LLORCA
Minister for Foreign Affairs

For the Government
of the Dominican Republic:
[Signed]

MANUEL TAVARES ESPAILLAT
Secretary of State
for Foreign Affairs

¹ *British and Foreign State Papers*, vol. LXV, p. 274.