

**No. 25807**

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**SPAIN  
and  
HUNGARY**

**Convention concerning extradition and judicial assistance in  
criminal matters. Signed at Budapest on 10 May 1985**

*Authentic texts: Spanish, Hungarian and French.*

*Registered by Spain on 24 March 1988.*

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**ESPAGNE  
et  
HONGRIE**

**Convention relative à l'extradition et à l'entraide judiciaire  
en matière pénale. Signée à Budapest le 10 mai 1985**

*Textes authentiques : espagnol, hongrois et français.*

*Enregistrée par l'Espagne le 24 mars 1988.*

## [TRANSLATION — TRADUCTION]

CONVENTION<sup>1</sup> CONCERNING EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE KINGDOM OF SPAIN AND THE HUNGARIAN PEOPLE'S REPUBLIC

His Majesty the King of Spain and

The Presidential Council of the Hungarian People's Republic,

Desiring to promote relations of friendship and co-operation between the two States, in accordance with the Final Act of the Conference on Security and Co-operation in Europe,<sup>2</sup>

Seeking to strengthen legal co-operation between the two States,

Wishing to regulate by mutual agreement questions relating to extradition and judicial assistance in criminal matters,

Have decided to conclude this Convention and, to that end, have designated as their plenipotentiaries:

His Majesty the King of Spain: His Excellency Mr. José María Ullrich y Rojas, Ambassador Extraordinary and Plenipotentiary of Spain to the Hungarian People's Republic;

The Presidential Council of the Hungarian People's Republic: His Excellency Dr. Borics Gyula, Secretary of State of the Ministry of Justice of the Hungarian People's Republic,

who, having exchanged their respective full powers, recognized in good and due form, have agreed on the following provisions:

## TITLE I. EXTRADITION

*Article 1*

The Contracting Parties undertake reciprocally to extradite, under the conditions stipulated in this Convention, persons whom the judicial authorities of one of the Parties are prosecuting for an offence or seeking for the execution of a sentence and who are in the territory of the other Party.

*Article 2*

Extradition shall be granted for:

- (a) Any act or acts which, under the laws of both Contracting Parties, constitute offences punishable by a penalty involving deprivation of liberty for a maximum term of at least one year or by a more severe penalty;

<sup>1</sup> Came into force on 1 February 1988, i.e., the first day of the second month following the date of the last of the notifications (effected on 25 March and 9 December 1987) by which the Contracting Parties had informed each other of the completion of the required constitutional formalities, in accordance with article 37.

<sup>2</sup> *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

- (b) Sentences to a penalty involving deprivation of liberty for a maximum term of six months which the courts of the requesting Party have imposed for the offences referred to in part (a) of this paragraph.

#### Article 3

1. The Contracting Parties shall not extradite their own nationals. Status as a national shall be determined at the time when the decision on extradition is taken.

2. The requested Party may refuse extradition of stateless persons residing in its territory, as well as that of persons who have been granted asylum in its territory.

#### Article 4

Extradition shall not be granted:

- (a) If the requested Party considers that the offence for which extradition is requested is a political offence or connected with an offence of that kind. An attempt on the life of a Head of State or a member of his family, or acts of terrorism against human life, shall not be considered political offences;
- (b) If the requested Party considers that the offence for which extradition is requested consists solely of a violation of military obligations.

#### Article 5

Extradition shall not be granted:

- (a) If the offence was committed in the territory of the requested Party;
- (b) If the offence for which it is requested was committed outside the territory of the requesting Party and the legislation of the requested Party does not authorize the prosecution of offences of the same type committed outside its territory;
- (c) If, under the law of the requesting Party, criminal proceedings are subject to the existence of a complaint or accusation on the part of a private individual and no such complaint or accusation has been presented;
- (d) If, under the law of either of the Parties, the period of limitation respecting the offence or penalty has expired;
- (e) If an amnesty or pardon has been granted in the requesting State;
- (f) If a decision having the force of *res judicata* has been adopted in the requested State for the same offence, with respect to the person claimed.

#### Article 6

Extradition may be refused:

- (a) If the person claimed is being prosecuted in the requested State for the offence which prompted the request for extradition, or if the competent authorities of that State have decided not to initiate or to discontinue proceedings for the same acts;
- (b) If the person claimed has been tried and acquitted by the authorities of a third State for the offence which prompted the request for extradition; or if he has been convicted, if the period of limitation of his sentence has expired or the sentence has been served under the law of that State, or he has been granted an amnesty or pardon;

- (c) If the person whose extradition is requested has been sentenced by default and the requesting Party does not give sufficient guarantees that that person will be duly heard and will have the right to make use of all the resources available under the law of the requesting Party.

#### Article 7

If the act having prompted the request for extradition is punishable by the death penalty under the law of the requesting Party and if the death penalty for that act is not provided for under the law of the requested Party or is generally not carried out, the granting of extradition may be made contingent on the provision by the requesting Party of guarantees, considered sufficient by the requested Party, that if the death penalty is imposed it will not be enforced.

#### Article 8

In extradition matters, unless otherwise stipulated in this Agreement, the Contracting Parties shall communicate with each other through the diplomatic channel.

#### Article 9

1. A request for the extradition of a person under prosecution shall be accompanied by the original or a certified copy of a detention order or any other document having the same legal force which is drawn up in the manner prescribed by the law of the requesting Party. This document must indicate or be accompanied by another document drawn up by the judicial authorities which indicates the circumstances under which the offence was committed, the time and the place where it was committed, the legal classification of the offence and references to the applicable legal provisions, as well as, in cases where the offence has caused material damage, all available details on its nature and gravity.

2. A request for the extradition of a person under sentence shall be accompanied by the original or a certified copy of the sentence pronounced with the force of *res judicata*.

3. In both cases, the request shall be accompanied by the text of the legal provisions applicable to the offence and, to the extent possible, by a physical description of the person and his photograph, as well as any information serving to establish his identity and nationality.

#### Article 10

1. In urgent cases, the judicial authorities of the requesting Party may apply for the provisional arrest of the person claimed, with a view to his extradition.

2. The application for provisional arrest shall specify the offence committed, the duration of the penalty incurred or imposed for the offence, the date and place of its perpetration and, to the extent possible, a physical description of the person claimed.

3. The application shall be transmitted to the judicial authorities of the requested Party either directly by mail or telegram, or through any other appropriate medium.

4. If the application appears justified, the judicial authorities of the requested Party shall act upon it in accordance with the provisions of its legislation.

5. The requesting Party shall be informed without delay of the decision taken on its application for provisional arrest. The provisional arrest may be terminated if, within 21 days, the requested Party has not received the request for extradition or the documents referred to in article 9.

6. Release shall not preclude further arrest if the request is submitted after the expiration of the period stipulated in the preceding paragraph.

#### *Article 11*

If the information provided by the requesting Party is insufficient to enable the requested Party to take a decision in application of this Convention, the latter Party shall request, through the diplomatic channel, the necessary additional information before refusing the request and may set a time-limit for the transmission of that information.

#### *Article 12*

Once the request for extradition or the application for provisional arrest has been received, if the conditions stipulated in Title I of this Convention have been met, the requested Party shall take all appropriate measures to seek the person claimed or, if applicable, to provide for his continued detention.

#### *Article 13*

1. The requested Party shall communicate its decision concerning the request for extradition to the requesting Party within a reasonable period of time.

2. If the requested Party totally or partially refuses the request for extradition, it shall give the reasons for its decision.

3. If the request for extradition is granted, the requested Party shall inform the requesting Party of the date and place of the surrender of the person claimed and of the duration of his detention.

4. The Contracting Parties may, by mutual agreement and upon a request made sufficiently in advance by one of the Parties, set a new place for the surrender of the person claimed, if circumstances warrant it.

5. If the person claimed has not been taken over by the requesting Party at the place and date set in accordance with paragraph 3 or paragraph 4 of this article, he may be released once a period of eight days has elapsed from that date; this period may be extended to 15 days if the requesting Party so requests, giving reasons for the extension. The extradition of a person thus released may not be requested again for the same acts.

6. Where necessary, communications pursuant to paragraphs 4 and 5 of this article may be transmitted through the channels provided for in article 10, paragraph 3, of this Convention.

7. The provisions of this article shall also apply in cases where the person is transported by air.

#### *Article 14*

1. If extradition is requested concurrently by several States, either for the same act or for different acts, the requested Party shall take its decision freely, having regard to all the circumstances and in particular to the nationality of the

person claimed, the place and the seriousness of the offence and the respective dates of the requests.

2. In the case provided for in the preceding paragraph, if extradition is granted, the requested Party may authorize the requesting Party to surrender the person whose extradition was granted to a third State which claims him concurrently.

#### Article 15

1. If the person claimed is being prosecuted or has been sentenced in the requested State for an offence other than that on which the request for extradition is based, that State shall nevertheless take a decision concerning the last-mentioned offence and shall communicate to the requesting Party its decision on the extradition, under the conditions provided for in article 13. The surrender of the person claimed may be deferred until the completion of judicial action in the requested State.

2. Surrender shall be effected on the date set in accordance with the provisions of article 13.

#### Article 16

1. The Contracting Party to which the person claimed has been surrendered shall inform the other Party of the outcome of the criminal proceedings undertaken against that person.

2. It shall also, if the person is sentenced, transmit a copy of the sentence pronounced with the force of *res judicata*.

#### Article 17

A person who has been extradited may not be prosecuted, sentenced, imprisoned for the execution of a penalty or subjected to any other restriction of his personal liberty or surrendered to a third State for an offence committed prior to extradition and other than that on which the request for extradition was based except in the following cases:

- (a) If the requested Party so consents;
- (b) If the person extradited has not left the territory of the requesting Party within 30 days following his final release; this period shall not include the period during which the person extradited has been unable to leave the territory of that Party for reasons independent of his will;
- (c) If the person returns voluntarily to the territory of the Party to which he was extradited, after having left that territory.

#### Article 18

1. If the consent of the requested Party is sought for the purpose of undertaking judicial action or executing a sentence imposed for an offence committed prior to extradition and other than that on which the request for extradition was based, the requesting Party shall be obliged to apply the provisions of articles 8 and 9 of this Convention.

2. If the consent of the requested Party is sought for the surrender to a third State of a person whose extradition has been granted, the requesting Party may

either request the third State to provide it with any document indicating the consent of the requested Party or transmit to the requested Party the request for extradition submitted by the third State, together with all pertinent documentation.

#### *Article 19*

Where the legal classification of the act with which he is charged is changed in the course of the proceedings, the person extradited may be prosecuted or sentenced only to the extent that extradition is warranted by the constituent elements of the offence whose classification has been changed.

#### *Article 20*

1. If extradition is granted, any articles having served to perpetrate the offence or having been acquired as a result of it or in exchange for articles thus acquired shall be handed over to the requesting Party. The articles shall be handed over even if extradition, having been granted, cannot be enforced because of the death or escape of the person claimed, or any other circumstance.

2. However, the rights which third parties may have to such articles shall be reserved. Upon completion of the proceedings, they shall be returned to the person to whom they belong. If the identity of this person cannot be established, they shall be returned to the requested Party.

3. The requested Party may temporarily retain the articles referred to in paragraph 1 of this article if it considers them necessary for criminal proceedings. The requested Party may request the return of articles transmitted pursuant to that paragraph, undertaking to hand them over again as soon as the proceedings under way in its territory so permit.

4. The requested Party shall not be obliged to return the articles referred to in the preceding paragraph if its authorities have ordered the confiscation or destruction of those articles.

#### *Article 21*

1. Each of the Contracting Parties shall grant, on the request of the other Party, the transit through its territory of a person extradited to the latter Party by a third State. The request shall be accompanied by documents indicating that the offence in question constitutes grounds for extradition under this Agreement.

2. The requested Party shall authorize transit by the means of transportation and under the conditions which it deems most appropriate.

3. The Contracting Parties shall not be obliged to authorize the transit of persons whose extradition is not effected in accordance with this Convention.

#### *Article 22*

1. Expenses occasioned by extradition shall be borne by the Party in whose territory they are incurred.

2. Expenses occasioned by transit shall be borne by the requesting Party.

## TITLE II. JUDICIAL ASSISTANCE

*Article 23*

The Contracting Parties undertake to provide each other with the broadest possible judicial assistance in criminal matters under the conditions provided for in this Convention and, in particular, with respect to the execution of letters rogatory, the transmission of judicial records and the exchange of criminal records.

*Article 24*

The provisions of Title II of this Convention shall not apply:

- (a) To offences for which extradition may not be granted under the provisions of article 4 of this Convention;
- (b) If the requested Party considers that compliance with the request for judicial assistance might jeopardize its sovereignty or security or the maintenance of law and order in its territory.

*Article 25*

Without prejudice to the provisions of article 30:

- (a) Requests from Hungary for judicial assistance shall be addressed by the Ministry of Justice or the Attorney-General to the Spanish Ministry of Justice;
- (b) Requests from Spain for judicial assistance shall be addressed by the Ministry of Justice to the Ministry of Justice or the Attorney-General of Hungary.

*Article 26*

1. The Contracting Parties shall execute, in the manner laid down in the legislation of the requested Party, letters rogatory relating to criminal matters which are addressed by the authorities of one Party to the authorities of the other Party for the purpose of pre-trial proceedings or the transmission of evidentiary material, records or documents.

2. The letters rogatory shall indicate the charge and the purpose of the request and shall contain a brief statement of the facts.

3. Letters rogatory for the purpose of searching for or seizing articles shall be executed only if they refer to one of the acts which constitute grounds for extradition under the terms of this Convention.

4. Articles may be handed over on the condition that they be returned once they are no longer needed for criminal proceedings.

5. At its express request, the requesting Party shall be informed of the date and place of execution of the letters rogatory so that judicial authorities and representatives of the parties concerned may be present at the time of execution, if the requested Party consents.

*Article 27*

1. The requested Party shall proceed, in accordance with the regulations in force in its territory, to serve the documents relating to judicial proceedings and the judicial decisions sent to it for that purpose by the requesting Party.

2. Service of documents shall be confirmed by a receipt signed and dated by the person named or by a declaration from the requested Party stating that service was effected and indicating the manner and date thereof. One or other of these documents shall be transmitted immediately to the requesting Party. If service cannot be effected, the requested Party shall immediately communicate the reasons therefor to the requesting Party.

3. No person who fails to obey a summons, the service of which has been requested, to appear as a witness or expert may be the object of any sanction or coercive measures, even if the summons makes provision for sanctions, unless he voluntarily enters the territory of the requesting Party on a subsequent date and is legally summoned again in that territory.

#### *Article 28*

1. If the requesting Party deems it particularly necessary for a witness or expert to appear in person before its judicial authorities in a criminal case, it shall mention the fact in the request for service of a summons, and the requested Party shall urge the witness or expert to appear. The requested Party shall communicate the response of the witness or expert to the requesting Party.

2. The witness or expert shall be entitled to the reimbursement of his travel and subsistence expenses, as well as to equitable compensation, which shall be paid by the requesting Party. If the witness or expert so requests, the requesting Party shall advance him a sum for travel and subsistence expenses.

#### *Article 29*

No person of whatsoever nationality residing in the territory of one of the Contracting Parties who, in response to a summons, appears before the authorities of the other Party as a witness or expert may be prosecuted or subjected to any other restriction of his personal liberty by reason of an act committed or a conviction pronounced prior to his arrival unless he has not left the territory of the requesting Party, having had the opportunity to do so, within 30 days following the termination of his activity as a witness or expert.

#### *Article 30*

Each of the Contracting Parties shall communicate to the other Party, at least once a year, the decisions it has taken with respect to nationals of the latter Party and entered in the criminal records. At the express request of either Party, a copy of the decision shall be transmitted. Such documents shall be transmitted through the embassy of the country to which they are addressed.

#### *Article 31*

1. When extracts from the judicial records of a person are requested in a criminal matter, those records shall be transmitted as though they had been requested by a judicial authority of the requested Party.

2. Reasons shall be given for such requests if they are made by a civil jurisdiction or administrative authority. Action shall be taken on such requests to the extent that the national laws or regulations of the requested Party so permit.

*Article 32*

Requests for judicial assistance relating to the notification of judicial records, summonses of witnesses or experts, the provision of extracts from criminal records or the transmission of simple reports shall contain the following particulars:

- (a) The name of the requesting authority;
- (b) The purpose of the request;
- (c) The act which constitutes grounds for the request;
- (d) The identity and, if possible, the nationality of the person concerned;
- (e) The name and address of the intended recipient, where applicable.

*Article 33*

1. Each of the Contracting Parties may request the other Party to take legal action in respect of offences committed in its territory by nationals of said other Party.

2. To this end, the records, information and articles relating to the offence shall be transmitted to the requested Party; such information shall concern in particular the legislation in force at the location where the offence was committed and, more specifically, in the case of traffic violations, the traffic regulations in force at such location.

3. The requested Party shall undertake to refer the matter to its competent authorities, to communicate the action taken on the request and to transmit a copy of the decision taken.

*Article 34*

The requested Party shall not request reimbursement of expenses arising from judicial assistance rendered under Title II of this Convention, except in the case of expenses and fees of experts.

*Article 35*

1. If the authority of the requested Party does not have jurisdiction in a matter, the request for judicial assistance shall be transmitted to the authority having such jurisdiction.

2. If the authority of the requested Party is unable to execute the request for judicial assistance, it shall so inform the authority of the requesting Party without delay, giving the reasons for which execution could not be effected.

## TITLE III. GENERAL PROVISIONS

*Article 36*

For the application of this Convention:

1. The documents required in extradition matters, as well as letters rogatory, shall be accompanied by a translation into the language of the requested Party.

2. Judicial records shall be accompanied by a translation into the language of the requested Party unless they are addressed to nationals of the requesting Party.

3. In their relations, the respective Ministries of Justice and the Attorney-General of Hungary shall maintain correspondence using their respective languages and, where applicable, their communications shall be accompanied by a translation into French.

#### TITLE IV. FINAL PROVISIONS

##### *Article 37*

Each of the Contracting Parties shall notify the other Party, as promptly as possible, of the completion of the formalities required under its Constitution for the entry into force of this Convention. The Convention shall take effect on the first day of the second month following the date of the later of these notifications.

##### *Article 38*

1. This Convention is concluded for an unlimited period.
2. Either Contracting Party may denounce this Convention at any time, and the denunciation shall take effect six months after the date on which the other Contracting Party receives notification thereof.

DONE at Budapest on 10 May 1985, in two copies, in Spanish, Hungarian and French.

In case of discrepancies, the French text shall be considered authoritative.

For His Majesty the King of Spain:

*[Signed]*

JOSÉ MARÍA ULLRICH Y ROJAS  
Ambassador Extraordinary  
and Plenipotentiary of Spain  
to the Hungarian People's Republic

For the Presidential Council  
of the Hungarian People's Republic:

*[Signed]*

BORICS GYULA  
Secretary of State  
of the Ministry of Justice  
of the Hungarian People's Republic