

No. 25942

**SPAIN
and
AUSTRALIA**

Treaty on extradition. Signed at Madrid on 22 April 1987

Authentic texts: Spanish and English.

Registered by Spain on 19 May 1988.

**ESPAGNE
et
AUSTRALIE**

Traité d'extradition. Signé à Madrid le 22 avril 1987

Textes authentiques : espagnol et anglais.

Enregistré par l'Espagne le 19 mai 1988.

TREATY¹ ON EXTRADITION BETWEEN SPAIN AND AUSTRALIA

Spain and Australia,

Desiring to make more effective the co-operation of the two countries in the suppression of crime by concluding a treaty for the extradition of persons charged with or convicted of offences,

Have agreed as follows:

Article I. OBLIGATION TO EXTRADITE

Each Contracting State agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence in the requesting State for an extraditable offence.

Article II. EXTRADITABLE OFFENCES

1. For the purpose of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting States (both at the time of the commission of the offence as well as at the time the extradition request) by imprisonment, detention order or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, detention order or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.

2. For the purpose of this Article it shall not matter whether the laws of the Contracting States place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same or similar terminology.

3. For the purpose of this Article in determining whether an offence is an offence against the law of both Contracting States, the totality of the acts or omissions alleged against the person whose extradition is requested shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting State.

4. Where the offence has been committed outside the territory of the requesting State extradition shall be granted where the law of the requested State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the requested State does not so provide the requested State may, in its discretion, grant extradition.

5. Extradition shall be granted for fiscal offences. Extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting State.

¹ Came into force on 5 May 1988, i.e., 30 days after the exchange of the notifications by which the Contracting Parties had informed each other (on 5 April 1988) of the completion of the legal requirements, in accordance with article XVI (1).

Article III. EXCEPTIONS TO EXTRADITION

1. Extradition shall not be granted in any of the following circumstances:

- (a) When the offence for which extradition is requested is a political offence. Reference to a political offence for the purpose of this sub-paragraph shall not include the taking or attempted taking of the life of a Head of State nor a member of his or her family, nor an offence against the law relating to genocide, nor any offence in respect of which the Contracting States have an obligation pursuant to an international agreement, to which they are both parties, to submit the case to their competent authorities for decision as to prosecution if extradition is not granted, nor any offence that the laws of both Contracting States provide shall not be regarded as a political offence;
- (b) When there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinion or that that person's position may be prejudiced for any of those reasons;
- (c) When the offence for which extradition is requested is an offence under military law which is not an offence under the ordinary criminal law of the Contracting States;
- (d) Where final judgement has been passed in the requested State or in a third state in respect of the offence for which the person's extradition is requested; or
- (e) Where the person whose extradition is requested has, according to the law of either Contracting State, become immune from prosecution or punishment by reason of lapse of time, or criminal responsibility has been extinguished for any other reason.

2. Extradition may be refused in any of the following circumstances:

- (a) When the person whose extradition is requested is a national of the requested State. Nationality shall be determined as at the time of the decision concerning extradition. Where the requested State refuses to extradite a national of that State it shall, if the other State so requests and the law of the requested State allows, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been requested may be taken if that is considered appropriate;
- (b) When the competent authorities of the requested State, having concurrent jurisdiction, have decided to refrain from prosecuting the person whose extradition is requested for the offence in respect of which extradition is requested;
- (c) Where the offence of which the person requested is accused or of which the person is convicted, or any other offence for which the person may be detained or tried in accordance with this Treaty, carries the death penalty under the law of the requesting State unless that State offers sufficient guarantees that, under no circumstances, will the death penalty be carried out;
- (d) When the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State;
- (e) When a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested; or

- (f) Where the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the exceptional circumstances of the case, the extradition would be incompatible with humanitarian considerations.

Article IV. POSTPONEMENT OF EXTRADITION

The requested State may postpone the extradition of a person in order to proceed against the person, or so that the person may serve a sentence, for an offence other than an offence for which extradition is requested and where the requested State so postpones the extradition it shall advise the requesting State.

Article V. EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS

1. A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be duly authenticated.

2. A request for extradition shall be accompanied by the following documents and information:

- (a) If the person is accused of an offence — a warrant for the arrest or a copy of the warrant for arrest of the person, a statement of each offence for which extradition is requested and a statement of the acts or omissions which are alleged against the person in respect of each offence;
- (b) If the person has been convicted of an offence — such documents as provide evidence of the conviction and the sentence imposed, the fact that the sentence is immediately enforceable and the extent to which the sentence has not been carried out;
- (c) If the person has been convicted of an offence but no sentence has been imposed — such documents as provide evidence of the conviction and a statement affirming that it is intended to impose a sentence;
- (d) In all cases — a copy of the relevant provision of the law including any law relating to the limitation of proceedings, as the case may be, and a statement of the punishment or detention order that can be imposed for the offence; and
- (e) In all cases — information or documentation which will help to establish the identity of the person whose extradition is requested.

3. Subject to the law of the requested State, extradition may be granted of a person sought pursuant to the provisions of this Treaty, notwithstanding that the requirements of paragraphs 1 and 2 of this Article have not been complied with, provided that the person sought consents to an order for extradition being made.

4. A Contracting State which sends to the other Contracting State a document in accordance with this Treaty that is not in the language of the other State shall, if requested, provide a translation of the document into the language of the other Contracting State.

Article VI. AUTHENTICATION OF DOCUMENTS

1. A document that, in accordance with Article V, accompanies a request for extradition shall be admitted, if duly authenticated, in any extradition proceedings in the territory of the requested State.

2. A document is duly authenticated for the purposes of this Treaty if:

- (a) It purports to be signed or certified by a judge, magistrate or officer in or of the requesting State; and
- (b) It purports to be authenticated by an official or public seal of the requesting State.

Article VII. ADDITIONAL INFORMATION

1. If the requested State considers that the information furnished in support of the request for the extradition of a person is not sufficient to fulfil the requirements of this Treaty, that State may request that additional information be furnished within such time as it specifies.

2. If the person whose extradition is requested is under arrest and the additional information furnished is not sufficient or is not received within the time specified, the person may be released from custody but such release shall not preclude the continuation of the extradition proceedings or the making of a fresh request for extradition.

3. Where the person is released from custody in accordance with paragraph 2, the requested State shall notify the requesting State as soon as practicable.

Article VIII. PROVISIONAL ARREST

1. In case of urgency a Contracting State may apply by means of the facilities of the International Criminal Police Organisation (INTERPOL) or otherwise for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel.

2. The application for provisional arrest shall give particulars of the definitive court decision or warrant of arrest, a description of the offence involved, when and where it was committed and the details of the identity of the person sought, and shall offer to submit subsequently an extradition request.

3. On receipt of such an application for provisional arrest the requested State shall take the necessary steps to secure the arrest of the person sought and the requesting State shall be promptly notified of the result of its request.

4. A person arrested upon such an application shall be set at liberty upon the expiration of forty days from the date of that person's arrest if a request for that person's extradition, supported by the documents specified in Article V, has not been received.

5. The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution or continuation of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article IX. CONFLICTING EXTRADITION REQUESTS

1. Where requests are received from two or more States for the extradition of the same person, the requested State shall determine to which of those States the person is to be extradited and shall notify the requesting States of its decision.

2. In determining to which State a person is to be extradited, the requested State shall have regard to all relevant circumstances and, in particular, to:

- (a) If the requests relate to different offences—the relative seriousness of the offences;
- (b) The time and place of commission of each offence;

- (c) The respective dates of the requests;
- (d) The nationality of the person; and
- (e) The ordinary place of residence of the person.

Article X. SURRENDER OF PERSON TO BE EXTRADITED

1. Neither Contracting State shall be required to make a decision on a request for extradition before the expiration of twenty-one days from the date on which the person has been held by final judicial decision to be liable to extradition.

2. The requested State shall as soon as a decision on the request for extradition has been made, communicate that decision to the requesting State through the diplomatic channel. Reasons shall be given for any complete or partial rejection of an extradition request.

3. Where extradition of a person for an offence is granted, the person shall be removed from a point of departure in the territory of the requested State convenient to the requesting State.

4. The requesting State shall remove the person from the territory of the requested State within such reasonable period as the requested State specifies. If the person is not removed within that period, the requested State may refuse to grant extradition for the same offence.

5. If circumstances beyond its control prevent a Contracting State from surrendering or removing the person to be extradited it shall notify the other State. The Contracting States shall agree upon a new date of surrender, and the provisions of paragraph 4 of this Article shall apply.

Article XI. SURRENDER OF PROPERTY

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. Subject to the provisions of paragraph 1 of this Article, the above-mentioned property shall, if the requesting State so requests, be surrendered to the requesting State even if the extradition cannot be carried out owing to the death or escape of the person sought.

3. Where the law of the requested State or the rights of third parties so require, any articles so surrendered shall be returned to the requested State free of charge if that State so requests.

Article XII. RULE OF SPECIALITY

A person who has been extradited shall not be proceeded against, sentenced or detained nor be subjected to any other restriction of personal liberty for any acts or omissions committed prior to that person's surrender other than that for which the person was extradited, except in the following cases:

- (a) When the requested State consents. A request for consent shall be accompanied by the documents or information mentioned in Article V;
- (b) When that person having had the opportunity to leave the territory of the requesting State has not done so within forty-five days of that person's final discharge, or has returned to that territory after leaving it.

Article XIII. RE-EXTRADITION TO A THIRD STATE

1. Where a person has been surrendered to the requesting State by the requested State, the requesting State shall not surrender that person to any third state for an offence committed before that person's surrender unless:

- (a) The requested State consents; or
- (b) The person has had an opportunity to leave the requesting State and has not done so within forty-five days of final discharge in respect of the offence for which that person was surrendered by the requested State or has returned to the territory of the requesting State after leaving it.

2. Before acceding to a request pursuant to sub-paragraph (1)(a) of this Article, the requested State may request the production of the documents or information mentioned in Article V.

Article XIV. TRANSIT

1. Where a person is to be extradited to a Contracting State from a third state or from a Contracting State to a third state through the territory of the other Contracting State, the Contracting State to which or from which the person is to be extradited shall request the other Contracting State to permit the transit of that person through its territory.

2. Upon receipt of such a request the requested State shall grant the request unless it is satisfied that there are reasonable grounds for refusing to do so. The requested State may request all or any of the documents or information mentioned in Article V.

3. Permission for the transit of a person shall, subject to the law of the requested State, include permission for the person to be held in custody during transit.

4. Where a person is being held in custody pursuant to paragraph 3, the requested State may direct that the person be released if transportation is not continued within a reasonable time.

Article XV. EXPENSES

1. The requested State shall make all necessary arrangements for and meet the cost of any proceedings arising out of a request for extradition.

2. The requested State shall bear the expenses incurred in its territory in the arrest and detention of the person whose extradition is requested, until the person is surrendered to whomsoever is nominated by the requesting State.

3. The requesting State shall bear the expenses incurred in conveying from the territory of the requested State the person whose extradition is requested.

Article XVI. ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall enter into force thirty days after the Contracting States have exchanged notifications that the legal requirements for its entry into force have been complied with.

2. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth day after the day on which notice is given. This Treaty, however, shall continue to apply to any request for extradition pending on the date on which the Treaty ceases to have effect.

3. Subject to paragraph 5 below, on entry into force of this Treaty, the Extradition Treaty signed between Spain and Great Britain on 4 June 1878¹ shall cease to have effect between the Contracting States.

4. Extraditions requested after the entry into force of this Treaty shall be governed by its provisions.

5. Extraditions requested prior to the entry into force of this Treaty shall continue to be processed and resolved in accordance with the provisions of the Extradition Treaty between Spain and Great Britain signed on 4 June 1878.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Madrid on the twenty-second day of April, one thousand nine hundred and eighty-seven in the Spanish and English languages, both texts being equally authentic.

For Spain:

[Signed]

Excelentísimo Señor Don
FERNANDO LEDESMA BARTRET
Ministro de Justicia

For Australia:

[Signed]

The Honourable
LIONEL FROST BOWEN
Attorney General

¹ *British and Foreign State Papers*, vol. 69, p. 6.