

No. 26600

—

**SPAIN
and
MEXICO**

**Treaty on the execution of penal sentences. Signed at Mexico
City on 6 February 1987**

Authentic text: Spanish.

Registered by Spain on 31 May 1989.

—————

**ESPAGNE
et
MEXIQUE**

**Traité relatif à l'exécution des condamnations pénales. Signé
à Mexico le 6 février 1987**

Texte authentique : espagnol.

Enregistré par l'Espagne le 31 mai 1989.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN SPAIN AND THE UNITED MEXICAN STATES ON THE EXECUTION OF PENAL SENTENCES

Spain and the United Mexican States,
Aware of the close ties existing between their two peoples, and
Desiring to promote the rehabilitation of offenders by enabling them to serve their sentences in the country of which they are nationals,
Have agreed as follows:

Article 1

Spain and the United Mexican States undertake, on the conditions set forth in this Treaty, to extend to each other the broadest possible cooperation in the execution of the penal sentences of persons sentenced to deprivation of liberty or to security measures.

Article 2

For the purposes of this Treaty,

- (a) *Sending State*: The State from which the offender is to be transferred.
- (b) *Receiving State*: The State to which the offender is to be transferred.
- (c) *Offender*: A person who, in the territory of one of the Parties, has been convicted of a crime or made subject to a security measure and sentenced either to imprisonment or to a term of probation, parole, conditional release or any other form of supervision without confinement, or to a system of rehabilitative internment.

Article 3

1. Sentences or security measures imposed in Spain on nationals of the United Mexican States may be served in penal establishments of the United Mexican States or under the supervision of its authorities.
2. Sentences or security measures imposed in the United Mexican States on nationals of Spain may be served in penal establishments of Spain or under the supervision of its authorities.
3. The transfer may be requested by either the sending State or the receiving State.

Article 4

1. Applications for transfer and replies thereto shall be made in writing.
2. Each Party shall designate an authority to perform the functions provided for in this Treaty; the authorities shall communicate with each other through the diplomatic channel.

¹ Came into force on 17 May 1989, i.e., 30 days after the exchange of the instruments of ratification, which took place at Madrid on 17 April 1989, in accordance with article 23 (2).

3. The sending State shall inform the receiving State as promptly as possible of its decision to grant or to reject the application for transfer.

4. In deciding upon the transfer of an offender, the authority of each Party shall bear in mind all relevant factors and the probability that the transfer will contribute to the social rehabilitation of the offender, including the nature and seriousness of his offence and his previous criminal record, if any, his medical condition, his age, the strength of his connections by residence, presence in the territory, family relations and otherwise to the social life of the receiving State.

Article 5

The application of this Treaty shall be subject to the following conditions:

1. That the acts or omissions which gave rise to the penal sentence are also punishable in the receiving State, though they may be characterized differently;
2. That the offence is not of a political or strictly military nature;
3. That the offender is a national of the receiving State;
4. That the offender is not a resident of the sending State;
5. That the sentence is enforceable, without prejudice to the provisions of article 17;
6. That the offender consents to the transfer;
7. That, if the offender is incapable of doing so, his legal representative consents to the transfer;
8. That at least six months of the sentence or security measure remain to be served at the time of the application referred to in article 13, paragraph 2, subparagraph (b). In exceptional cases, the Parties may agree on the admissibility of an application when the period remaining to be served is less than that stipulated herein.

Article 6

Each Party shall explain the substance of this Treaty to any offender who may be within its scope.

Article 7

The offender may submit a petition for transfer either directly to the receiving State or through the sending State.

Article 8

If the sending State has received from the offender a petition for transfer, it shall so inform the receiving State as promptly as possible, once the sentence has become enforceable.

Article 9

If the receiving State has received from the offender a petition for transfer, it shall communicate the petition to the sending State as promptly as possible, once the sentence has become enforceable, together with the information required under article 12.

Article 10

The diplomatic or consular authorities of the sending State or the receiving State shall inform the offender in writing of measures taken by their State in application of the preceding paragraphs, as well as of decisions taken by either Party with respect to the application for transfer.

Article 11

1. The sending State shall ensure that the consent referred to in article 5, paragraphs 6 and 7, has been given voluntarily and with full knowledge of the legal consequences thereof.

2. Such consent shall be expressed in the manner provided by the law of the sending State.

3. The receiving State may verify, through its accredited representatives to the sending State, that such consent has been given under the conditions provided in the preceding paragraph.

Article 12

The sending State shall inform the receiving State:

- (a) Of the name and the date and place of birth of the offender;
- (b) Of the facts which gave rise to the sentence;
- (c) Of the nature, duration and starting and ending dates of the sentence; and
- (d) If applicable, of the location in the territory of the receiving State to which the offender wishes to be transferred.

Article 13

1. The receiving State shall submit the application for transfer together with the following documentation:

- (a) Documentary proof that the offender is a national of that State;
- (b) A copy of the legal provisions under which the acts or omissions which gave rise to the conviction in the sending State are also punishable as a crime or subject to a security measure in the receiving State; and
- (c) The concurrence of the factors referred to in article 4, paragraph 4.

2. The sending State shall submit the application for transfer together with the following documentation:

- (a) A certified copy of the sentence, with an indication of its enforceability;
- (b) The duration of the sentence or security measure, the length of time already served and any credits to which the offender is entitled, such as, but not limited to, work done, good behaviour or pre-trial confinement; and
- (c) Any additional information that might be useful to the authorities of the receiving State in determining the treatment of the offender with a view to his social rehabilitation.

3. Either Party may, before submitting an application for transfer or deciding whether to grant or reject such an application, request from the other Party the documents and information referred to in paragraphs 1 and 2 of this article.

Article 14

Each Party shall take the necessary legislative measures and, where required, establish appropriate procedures to give legal effect within its territory to sentences within the scope of this Treaty which are pronounced by courts of the other Party.

Article 15

1. The sentence shall be served in the receiving State according to the laws of that State.

2. In the execution of the sentence, the receiving State:

- (a) Shall be bound by the legal nature and duration of the sentence or security measure;
- (b) Shall be bound by the facts established in the sentence;
- (c) May not convert the sentence or security measure to a financial penalty;
- (d) Shall deduct in full the period of pre-trial confinement; and
- (e) Shall neither aggravate the situation of the prisoner nor be bound by the minimum penalty which may be provided by its legislation for the offence committed.

Article 16

Either Party may grant a pardon, amnesty or commutation of the sentence or security measure, in accordance with its Constitution or other applicable legal provisions.

Article 17

The sending State shall have exclusive jurisdiction over any proceedings, regardless of their nature, intended to challenge, modify or set aside sentences handed down by its courts. The receiving State shall, upon being notified by the sending State of any decision affecting a sentence, take appropriate action in accordance with such notification.

Article 18

An offender delivered for execution of a sentence under this Treaty may not be detained, tried or sentenced in the receiving State for the same criminal acts or grounds for the imposition of security measures upon which the existing sentence or security measure is based.

Article 19

1. Delivery of the offender by the authorities of the sending State to those of the receiving State shall occur at a place agreed upon by the Parties.

2. The receiving State shall assume the costs of the transfer from the time at which the offender is taken into its custody.

Article 20

No prison sentence shall be enforced by the receiving State in such a way as to extend its duration beyond the prison term imposed by the sentence of the court of the sending State.

Article 21

The receiving State shall inform the sending State:

- (a) When it considers that the sentence or the imposition of the security measure has been served;
- (b) In the event of the prisoner's escape; and
- (c) Of any information which the sending State may request of it in connection with this Treaty.

Article 22

1. This Treaty shall also be applicable to persons subject to supervision or other measures under the laws of one of the Parties relating to juvenile offenders. The Parties shall, in accordance with their laws, agree to the type of treatment to be accorded to such individuals upon transfer. Consent for the transfer shall be obtained from the person legally authorized for that purpose.

2. This Treaty shall not abrogate nor derogate from any provision in the legal system of either Party which pertains to the ability of the Parties to grant or accept the transfer of juvenile or other offenders.

Article 23

1. This Treaty is subject to ratification.

2. This Treaty shall enter into force 30 days after the exchange of the instruments of ratification and shall remain in force for three years.

3. Should neither Party have notified the other, 90 days before expiry of the three-year period mentioned in the preceding paragraph, of its intention to denounce the Treaty, the Treaty shall remain in force for another three years, and so on for additional periods of equal duration.

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

DONE at Mexico City on 6 February 1987 in two original copies in the Spanish language, both texts being equally authentic.

For the Government
of Spain:

[Signed]

FRANCISCO FERNÁNDEZ ORDOÑEZ
Minister
for Foreign Affairs

For the Government
of the United Mexican States:

[Signed]

BERNARDO SEPÚLVEDA AMOR
Secretary
for Foreign Affairs