

**No. 27439**

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**BRAZIL  
and  
SPAIN**

**Treaty concerning extradition. Signed at Brasília on 2 February 1988**

*Authentic texts: Portuguese and Spanish.*

*Registered by Brazil on 24 July 1990.*

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**BRÉSIL  
et  
ESPAGNE**

**Traité d'extradition. Signé à Brasília le 2 février 1988**

*Textes authentiques : portugais et espagnol.*

*Enregistré par le Brésil le 24 juillet 1990.*

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> CONCERNING EXTRADITION BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE KINGDOM OF SPAIN

The Federative Republic of Brazil and  
The Kingdom of Spain

(Hereinafter referred to as "States"),

Conscious of the close historical ties uniting the two nations, and

Desiring to reflect those ties in legal instruments concerning cooperation in areas of common interest, including cooperation to facilitate the administration of justice in criminal matters,

Have agreed as follows:

## TITLE I. PURPOSE OF THE TREATY

*Article I*

The two States undertake to surrender to each other, subject to the conditions laid down in this Treaty and in accordance with the legal formalities in force in the requesting and the requested States, persons against whom criminal proceedings have been instituted or who have been sentenced by the judicial authorities of one State and are present in the territory of the other State.

## TITLE II. CASES IN WHICH EXTRADITION IS ALLOWABLE

*Article II*

1. Extradition shall be granted in respect of acts punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a term of more than one year, independent of modifying circumstances and the description of the offence.
2. If extradition is requested for the enforcement of a sentence, the part of the term remaining to be served must be greater than one year.
3. When the request for extradition refers to more than one offence, and some of the offences do not meet the requirements of the two preceding paragraphs, extradition may be granted if any of the offences meet those requirements.
4. Extradition shall be carried out in respect of perpetrators, accessories and accessories after the fact, whatever the degree of execution of the offence.
5. Extradition shall also be granted in respect of acts covered by multilateral agreements duly ratified by both States.
6. Extradition shall be granted for fiscal offences against the Treasury, including those relating to contraband and exchange control, in accordance with the terms of this Treaty and the law of the requested State. Extradition may not be refused on the grounds that the law of the requested State does not impose the same

<sup>1</sup> Came into force on 30 June 1990, i.e., the last day of the month following the exchange of the instruments of ratification, which took place at Madrid on 11 May 1990, in accordance with article XXIII.

kind of tax or duty or does not contain the same kind of regulations as the law of the requesting State.

### TITLE III. CASES IN WHICH EXTRADITION IS NOT ALLOWABLE

#### *Article III*

1. When the person claimed is a national of the requested State, that State shall not be obliged to surrender him. In the event that extradition is not granted, the individual shall, if the other State so requests, be prosecuted in the requested State for the act which prompted the request for extradition, unless that act is not punishable under the law of the requested State.

2. In the aforementioned case, the requesting State shall supply evidence for the prosecution of the accused and the other State shall undertake to inform it of the sentence or final decision concerning the matter.

3. Nationality shall be determined under the law of the requested State, as at the time of the decision concerning extradition, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

#### *Article IV*

1. Extradition shall not be granted:

(a) When, according to its own law, the requested State is competent to adjudicate on the offence;

(b) When the person claimed is liable to prosecution or has already been tried for the same act in the requested State or has been granted an amnesty or pardon in that State;

(c) When the person claimed has, according to the law of either the requesting or the requested State, become immune by reason of lapse of time from criminal prosecution or punishment;

(d) When the person claimed would be tried in the requesting State before a court or tribunal of special jurisdiction;

(e) When the offence for which extradition is requested is purely military in nature;

(f) When the offence is political or connected with a political offence;

(g) When the requested State has substantial reasons for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person claimed on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

2. The authorities of the requested State shall have exclusive competence to evaluate the nature of the offence.

3. Allegations of political purposes or motives shall not prevent extradition if the act constitutes principally a violation of ordinary law. In that event, extradition shall be granted provided that the requesting State gives a formal assurance that political purposes or motives will not contribute to the imposition of a heavier sentence.

4. For the purposes of this Treaty, offences shall be considered to be purely military when they involve acts not covered by ordinary criminal law and are de-

rived solely from special legislation applicable to members of the armed forces and intended to maintain order or discipline in those forces.

5. The following shall not be considered as political offences:

- (a) An attempt against the life of a foreign Head of State or Government or a member of his family;
- (b) Terrorist acts;
- (c) War crimes or crimes against the peace and security of mankind.

#### TITLE IV. GUARANTEES APPLICABLE TO THE PERSON CLAIMED

##### *Article V*

1. A person extradited by virtue of this Treaty shall not:

- (a) Be surrendered to a third country which claims him without the consent of the requested State;
- (b) Be tried for any prior act, unless the individual himself expressly and freely consents, or, having been set free and warned of the consequences of remaining for more than 30 days in the territory of the State where he was tried, he has remained there past that time-limit.

2. If the description of the act charged is altered in the course of proceedings, the person claimed shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

##### *Article VI*

1. Extradition shall not be granted unless the requesting State guarantees that the time the person claimed has spent in custody in the requested State as a result of the request for extradition will be counted.

2. If the act giving rise to the request for extradition is punishable by death, life imprisonment or penalties involving physical punishment or inhuman or degrading treatment, the requested State may make extradition conditional on a prior guarantee from the requesting State through the diplomatic channel that, if the person is convicted, such sentences will not be imposed, and that the first two will be converted into the maximum term of deprivation of liberty provided under the law of the requested State.

##### *Article VII*

If the person claimed has been sentenced by default, extradition shall not be granted if, in the view of the requested State, the basic right to a defence accorded to all persons accused of an offence has not been respected in the proceedings giving rise to the sentence. Extradition may, however, be granted if the requesting State gives sufficient assurances that the person claimed may make use of the remedies and other procedural guarantees provided under the law of the requesting State.

##### *Article VIII*

The requested State may deny extradition of a person claimed to whom it has granted or is in the process of granting asylum. In this case, the provisions of article III shall apply.

## TITLE V. PROCEDURES

*Article IX*

1. The request for extradition shall be made through the diplomatic channel, upon submission of the following documents:

(a) In the case of an individual who has not been sentenced: the original or an authenticated copy of the detention order or equivalent criminal procedure document, issued by the competent foreign authority;

(b) In the case of an individual who has been sentenced: the original or an authenticated copy of the sentence and proof that it has not been served in full, indicating the time remaining to be served.

2. The documents submitted should contain a precise indication of the act with which the person claimed is charged and the time and place of its perpetration, together with the information or records required to confirm the identity of that person. They should also include a copy of the legal provisions applicable in the requesting State establishing its competence and of the legal provisions concerning the periods of limitation in respect of criminal proceedings or punishment.

3. The requesting State shall also submit proof or evidence that the person claimed has entered or remains in the territory of the requested State.

4. Submission of the request for extradition through the diplomatic channel shall constitute sufficient proof of the authenticity of documents submitted for this purpose, which shall be taken as authenticated.

5. The documents accompanying the request for extradition shall be accompanied by a translation into the language of the requested State. In case of urgency, the request for provisional arrest may be in the language of the requesting State.

6. In the cases covered by articles IV, paragraph 3, VI and VII, the requesting State shall provide the guarantees required under those articles.

*Article X*

If the request for extradition has not been properly prepared, the requested State shall ask the requesting State to rectify the deficiencies noted within 60 days, after which time the request shall be considered on the basis of the available documentation.

*Article XI*

The person claimed shall benefit from the right to a defence under the law of the requested State, including the assistance of counsel and, if necessary, of an interpreter.

*Article XII*

In case of urgency, the requesting State may request the provisional arrest of the person claimed and the seizure of property related to the offence. The request should contain a statement to the effect that one of the documents mentioned in article IX exists. The request for extradition, duly prepared, should be submitted within 80 days. If the request is not prepared within that time-limit, the person claimed shall be set free and a new request for detention for the same act shall be accepted only if prepared in the manner prescribed in article IX.

### *Article XIII*

1. If extradition is granted, the requested State shall immediately inform the requesting State that the person claimed is available for surrender.

2. If within 60 days of such notice, the person claimed has not been taken over by the requesting State, the requested State shall release him, and he may not be detained again for the same offence.

3. The surrender of the person claimed shall be postponed, without prejudice to the effectiveness of the extradition:

(a) If a serious illness makes it impossible to transport him to the requesting State without endangering his life;

(b) If the person claimed is subject to criminal proceedings in the requested State for another offence, in which case extradition may be postponed until the proceedings have been completed or, if a sentence is imposed, until that sentence has been served;

(c) If, for exceptional and sufficiently serious personal reasons, the transfer would be incompatible with humanitarian considerations.

### *Article XIV*

If extradition is denied, it may not be requested again for the same act which gave rise to the original request. Reasons shall be given for any total or partial refusal.

### *Article XV*

Upon prior agreement, the requesting State may send duly authorized agents to the requested State to assist in the identification of the person claimed and to escort that person to its territory. Such agents may not exercise authority in the territory of the requested State, remaining subordinate to its authorities. Any expenses incurred in this connection shall be borne by the requesting State.

### *Article XVI*

1. Transit through the territory of either State of a person who is not a national of the transit country and who is being surrendered to either State by a third State shall be permitted without any judicial formalities being required; a request submitted through the diplomatic channel, accompanied by the original or an authenticated copy of the document by which the State of refuge has granted extradition, shall suffice.

2. Transit may be denied if it seriously jeopardizes the maintenance of law and order or if the act for which extradition is requested would not, according to this Treaty, have justified extradition.

3. It shall not be necessary to request transit when air transport is used and no landings in the territory of the transit State are planned, except in the case of military aircraft.

### *Article XVII*

Expenses incurred in connection with the request for extradition up to the time of surrender to the duly authorized agents of the requesting State shall be borne by

the requested State; expenses incurred after that time, including transit costs, shall be borne by the requesting State.

#### *Article XVIII*

1. Without prejudice to the rights of third parties and taking into account the law of the requested State, all property, assets or documents relating to the offence found in the possession of the person claimed at the time of his arrest shall be handed over to the requesting State when the person is surrendered.

2. Property, assets and documents relating to the offence that are in the possession of third parties shall also be seized, but shall be handed over only upon settlement of the claims submitted by those concerned.

3. The property, assets and documents referred to shall be handed over to the requesting State upon settlement of the above-mentioned claims, even if the extradition granted cannot be carried out owing to the escape or death of the person claimed.

4. The requested State may temporarily retain such property, assets and documents or may hand them over on condition that they shall be returned if they should be necessary for pre-trial criminal proceedings.

#### *Article XIX*

If, after being surrendered by one State to the other, an individual succeeds in evading the judicial process and enters the territory of the requested State, he shall be detained upon a request made through the diplomatic channel and shall be surrendered again, without any further formalities, to the State to which extradition has already been granted.

#### *Article XX*

The State to which extradition has been granted shall inform the State granting it of the final verdict in the case which led to the request for extradition, if the person claimed is found innocent.

### TITLE VI. CONFLICTING EXTRADITION REQUESTS

#### *Article XXI*

1. When the extradition of a person is requested by more than one State, preference shall be given, in the following order:

(a) To the State with which an extradition treaty exists;

(b) To the State in whose territory the offence was committed, if the requests concern the same act;

(c) To the State in whose territory the offence which the requested State considers to be the most serious was committed;

(d) To the State which submitted its request first, if the requests concern different acts which the requested State considers to be equally serious;

(e) To the State of origin or residence of the person claimed, if the requests were simultaneous.

2. In cases not covered above, the requested State shall decide on the preference to be given.

TITLE VII. GENERAL PROVISIONS

*Article XXII*

This Treaty shall apply to persons who enter the territory of the requested State at any time after its entry into force and to those present in its territory within 45 days after its entry into force, whatever the date on which the offence was committed.

*Article XXIII*

This Treaty is subject to ratification. It shall enter into force on the last day of the month following the exchange of the instruments of ratification, which shall take place at Madrid.

*Article XXIV*

This Treaty is concluded for an indefinite period. Either State may denounce it in writing through the diplomatic channel. The denunciation shall take effect beginning on the last day of the sixth month following notification.

DONE at Brasília, 2 February 1988, in two copies in the Portuguese and Spanish languages, both texts being equally authentic.

For the Federative Republic  
of Brazil:

[Signed]

PAULO TARSO FLECHA DE LIMA

For the Kingdom of Spain:

[Signed]

FERNANDO LEDESMA BARTRET

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