

[SPANISH TEXT — TEXTE ESPAGNOL]

TRATADO DE EXTRADICIÓN Y ASISTENCIA JUDICIAL EN MATERIA PENAL ENTRE EL REINO DE ESPAÑA Y LA REPÚBLICA ARGENTINA

El Reino de España y la República Argentina,

Conscientes de los profundos vínculos históricos que unen a ambas Naciones y deseando traducirlos en instrumentos jurídicos de cooperación en todas las áreas de interés común y entre ellas las de cooperación judicial.

Han resuelto concluir un Tratado de Extradición y Asistencia Judicial en materia penal en los siguientes términos:

T I T U L O I

EXTRADICION

ARTICULO 1º

Las Partes contratantes se obligan a entregarse recíprocamente, según las reglas y condiciones establecidas en los artículos siguientes, las personas a quienes las autoridades judiciales de una de las Partes persiguieren por algún delito o buscaren para la ejecución de una pena o medida de seguridad que consista en privación de libertad.

[TRANSLATION — TRADUCTION]

TREATY¹ CONCERNING EXTRADITION AND JUDICIAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE KINGDOM OF SPAIN AND THE ARGENTINE REPUBLIC

The Kingdom of Spain and the Argentine Republic,

Conscious of the deep historical ties uniting the two nations and desiring to reflect them in juridical instruments of cooperation in all areas of common interest, including judicial assistance,

Have decided to conclude a Treaty concerning Extradition and Judicial Assistance in Criminal Matters 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 being prosecuted by the judicial authorities of one of the Parties for an offence, or being sought in order to serve a sentence or security measure involving deprivation of liberty.

Article 2

1. Acts which under the laws of both Parties are punishable by deprivation of liberty or security measures involving deprivation of liberty for a term of not less than one year shall give rise to extradition.

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

3. If the request refers to several acts, some of which fail to meet the requirements of paragraphs 1 and 2, the requested Party may also grant extradition under those paragraphs.

Article 3

Punishable acts covered by multilateral agreements to which both countries are parties shall also give rise to extradition in accordance with this Treaty.

Article 4

1. In matters involving taxation, rates, customs and exchange, extradition shall be granted, under the provisions of this Treaty, if the acts meet the requirements of article 2.

¹ Came into force on 15 July 1990, i.e., 30 days after the exchange of the instruments of ratification, which took place at Madrid on 15 June 1990, in accordance with article 44 (2).

2. Extradition may not be denied on the grounds that the laws of the requested Party do not impose the same type of tax or charges or do not contain the same type of regulations in these matters as the laws of the requesting Party.

Article 5

1. Extradition shall not be granted for offences considered to be of a political nature or connected with offences of that kind. The mere allegation of a political purpose or motivation in the commission of an offence shall not, in itself, qualify it as an offence of a political nature.

For the purposes of this Treaty, the following shall in no case be considered political offences:

(a) An attempt to assassinate a head of State or Government or a member of his family;

(b) Acts of terrorism;

(c) War crimes and crimes against the peace and security of mankind.

2. Extradition shall likewise not be granted if the requested Party has well-founded reasons for believing that the request for extradition has been submitted for the purpose of prosecuting or punishing the person sought for reasons of his race, religion, nationality, or political opinions, or that the person's situation may be prejudiced for any of those reasons.

Article 6

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

Article 7

1. Where the person sought is a national of the requested Party, the latter may refuse to grant extradition under its own laws. Nationality shall be determined at the time when the decision on extradition is taken, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

2. Where the requested Party refuses to grant the extradition of one of its nationals for reasons of nationality, it shall, at the petition of the requesting Party, refer the matter to the competent authorities so that they may initiate judicial proceedings against the person. To that end, all documents, information and articles relating to the offence may be transmitted free of charge through the channel provided for in article 15.

The requesting Party shall be informed of the decision taken on its request.

Article 8

None of the provisions of this Treaty shall be interpreted as a limitation on asylum, once it has been granted. Therefore, the requested Party may also refuse to extradite a person granted asylum under its own laws.

If extradition is denied for this reason, the provisions of paragraph 2 of the previous article shall apply.

Article 9

Extradition shall be denied:

(a) If, under its laws, the requesting Party is not competent to investigate the offence which gave rise to the extradition request.

(b) If the person sought has been sentenced or is to be tried by a court of special or ad hoc jurisdiction in the requesting Party.

(c) If, under the laws of either Party, liability to penalty or criminal action for the offence giving rise to the extradition request has been extinguished.

(d) If the person sought has been tried in the requested Party for the act giving rise to the extradition request.

Article 10

Extradition shall not be granted if the acts for which it is requested are punishable by the death penalty or life imprisonment, or by penalties or security measures involving bodily assault or exposure to inhuman or degrading treatment.

However, extradition may be granted if the requesting Party provides sufficient guarantees that the person to be expedited will not be executed and that the maximum sentence to be served will be the most severe short of life imprisonment, or that he will not be subjected to punishment involving bodily assault or to inhuman or degrading treatment.

Article 11

Extradition may be denied:

(a) If the courts of the requested Party are competent, under its own laws, to investigate the offence giving rise to the extradition request. The requested Party may, however, grant extradition if it has decided, or should decide, not to begin proceedings or to terminate any proceedings that have been initiated.

(b) If the offence was committed outside the territory of the requesting Party and the laws of the requested Party do not permit the prosecution of an offence of that type committed outside its territory.

(c) If the person sought is under 18 years of age at the time the extradition request is submitted and has ties in the requested Party, and that Party believes that extradition could be detrimental to his integration into society, without prejudice to the adoption of the most appropriate measures provided under the laws of the requested Party.

Article 12

1. If the person sought has been sentenced by default, extradition shall (not) be granted (unless) the requesting Party provides guarantees that his defence will be heard and that he will be given the appropriate legal resources.

2. If extradition is granted, the requesting Party may carry out the sentence with the express consent of the convicted person.

Article 13

1. In order for a person who has been extradited to be tried, sentenced or subjected to any type of restriction of his personal liberty for acts prior to and different from those which were the grounds for his extradition, the requesting Party shall request the appropriate authorization from the requested Party. The latter may require the requesting Party to submit the documents listed in article 15.

Authorization may be granted even if the requirements of article 2, paragraphs 1 and 2, have not been met.

2. Such authorization shall not be required if the person who has been extradited gives his express consent, or, although free to leave the territory of the State to which he was handed over, remained there for more than 30 days or left the territory and subsequently returned.

Article 14

Where the legal classification of the act with which he is charged is modified during the proceedings, the person who has been extradited shall be prosecuted or sentenced only to the extent that the constituent elements of the offence under the new classification would have warranted extradition.

Article 15

1. The request for extradition shall be made in writing and transmitted through the diplomatic channel. However, either Party may inform the other of the appointment of a central authority competent to receive and transmit requests for extradition.

2. The extradition request shall be accompanied by:

(a) A copy or transcript of the sentence, committal order, detention order or any other similar decision under the laws of the requesting Party, with a summary statement of the acts, location and date of occurrence, and, in the case of a sentence, certification that it has not been completely served and an indication of the time remaining to be served.

(b) As much information as is available on the identity, nationality and residence of the person sought and, if possible, his photograph and fingerprints.

(c) A copy or transcript of the legal texts which classify and sanction the offence and state the applicable penalties or security measures, of those which establish the competence of the requesting Party to try the case and of those referring to the prescription of actions and of the penalty or security measure.

(d) The guarantees regarding the application of the penalties or security measures referred to in article 10, if necessary.

Article 16

1. If the information or documents sent with the request for extradition are incomplete or defective, the requested Party shall so inform the requesting Party as soon as possible so that the requesting Party may correct, within the time-limit established by the requested Party, the omissions or errors noted.

2. If, owing to exceptional circumstances, the requesting Party is unable to meet this deadline, it may apply for an extension from the requested Party.

Article 17

The requested Party may grant extradition without observing the formalities established by this Treaty if the person sought, with the benefit of legal assistance, gives his express consent after having been informed of his right to extradition proceedings and the protection such proceedings afford him.

Article 18

1. The requested Party shall communicate to the requesting Party, through the channel provided for in article 15, its decision concerning the extradition.

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; such surrender shall take place within (45) days from the date of the communication referred to in paragraph 1 of this article.

4. If the person sought has not been received within this time period, he shall be released and the requesting Party may not subsequently request extradition for the same offence.

5. The documents, funds and other items which are to be made available to the requesting Party shall be surrendered at the same time as the person is handed over.

Article 19

1. If the person sought is being tried or is serving a sentence in the requested Party, his surrender may be postponed until those responsibilities in that Party have been extinguished, or he may be temporarily or definitively handed over on such terms as may be agreed with the requesting Party.

2. If the surrender would seriously jeopardize the life or health of the person sought, it may be postponed until such circumstances no longer exist.

3. The surrender of the person sought may also be deferred if, for sufficiently serious personal reasons, it would be incompatible with humanitarian interests.

Article 20

If extradition is denied for reasons other than purely formal defects, the requesting Party may not submit another extradition request to the requested Party for the same offence.

Article 21

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 being extradited shall be permitted upon presentation of a request through the channel stipulated in article 15, accompanied by a copy of the decision granting the extradition and a copy of the original extradition request. The Parties may refuse to allow the transit of their own nationals.

The authorities of the transit State shall have custody of the person being extradited.

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

2. A request for conveyance in transit shall be unnecessary if air transport is used and no landings in the territory of the transit State are planned.

Article 22

Re-extradition to a third State shall not be granted without the consent of the Party which agreed to the extradition, except in the case provided for in article (13), paragraph (2).

To that end a new request for extradition meeting all the requirements established in this Treaty shall be made.

Article 23

1. If the extradition of the same person has been requested by more than one State, the requested Party shall determine to which of those States it will surrender the person sought and shall notify the requesting Party of its decision.

2. Where the requests refer to the same offence, the requested Party shall give preference to the request of the State in whose territory the offence was committed, unless particular circumstances exist that recommend otherwise.

The particular circumstances which may be taken into account include the nationality and habitual domicile of the person sought and the dates of the respective requests.

3. If the requests are made for separate offences, the requested Party shall give preference to the request involving the offence considered to be the most serious under its laws, unless the particular circumstances of the case recommend otherwise.

Article 24

1. In urgent cases, the competent authorities of the requesting Party may apply for the pre-trial detention of the person sought.

2. The application for pre-trial detention shall contain an indication of the existence of one of the decisions provided for in article (15), (para. 2), and of the intention to submit without delay a formal request for extradition. It shall also specify the offence for which extradition is requested, the time and place of perpetration and, as far as possible, the identity of the person sought.

3. The application for pre-trial detention shall be transmitted by mail, telegraph or any other means that affords evidence in writing through the channel stipulated in article 15 or through the International Criminal Police Organization.

4. The requested Party shall inform the requesting Party of any decisions taken and, especially and urgently, of the arrest and the time-limit within which the extradition request must be submitted.

5. The competent authority of the requested Party may order the release of the detained person, taking appropriate measures to prevent his escape. In any case, he shall be released if the extradition request has not been received within 40 days after the pre-trial detention.

6. If the person sought has been released upon the expiration of the time-limit provided in the previous paragraph, the requesting Party may not apply again for the pre-trial detention of the person sought without submitting a formal extradition request.

7. Where extradition proceedings are initiated in response to a request as provided for in article 15, without a prior urgent request for detention, the detention and any modification thereof shall be carried out under the laws of the requested Party.

Article 25

1. At the request of the requesting Party, the requested Party shall to the extent permitted by its laws seize and hand over documents, property and other articles:

(a) Which may serve as evidence, or

(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 arrest or have been discovered subsequently.

2. Such documents, money and articles shall be handed over even if the extradition, having been granted, cannot be carried out because of the death or escape of the person sought.

3. The requested Party may retain them temporarily or hand them over on condition that they are returned if they are needed as evidence in a criminal trial already in progress.

4. In all cases the requested Party or any third parties involved shall retain any rights which they have acquired to the above-mentioned articles. Where such rights exist, the articles shall be returned to the requested party as soon as possible and without any charge.

Article 26

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

Article 27

The requesting Party may appoint an official representative authorized to appear before the judicial authorities in the extradition proceedings. This representative shall be formally summoned to testify prior to the judicial decision on extradition.

TITLE II

JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

Article 28

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. 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 premises only in the case of acts which are also considered offences under the legislation of the requested Party.

Article 29

Judicial assistance may be refused:

(a) If, in the opinion of the requested Party, the request relates to political or related offences. To that effect, the provisions of article 5, paragraph 1, shall apply.

(b) If the request relates to offences of a strictly military nature.

Article 30

1. The request for assistance shall be in the form of a letter or letter rogatory.
2. The request for assistance shall be complied with in accordance with the legislation of the requested Party and shall be limited to the formalities specifically requested.
3. If a request for assistance cannot be met, the requested Party shall return it with an explanation of the reasons.

Article 31

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

Article 32

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 pre-trial proceedings or communication.

Article 33

1. If the letters rogatory are issued for the purpose of obtaining records, evidence or any kind of documents in general, the requested Party may simply transmit certified copies or photocopies, unless the requesting Party specifically requests the originals.
2. The requested Party may refuse to send articles, records or original documents requested if its legislation does not permit it to provide them or if they are needed for criminal proceedings that have already been instituted.
3. Articles or documents which have been transmitted in execution of a letter rogatory shall be returned as soon as possible, unless the requested party waives that requirement.

Article 34

1. If the purpose of the request is the handing over of articles and documents, the requested Party shall proceed to deliver the articles or documents sent to it for that purpose by the requesting Party.
2. Delivery may be carried out in any manner prescribed by the legislation of the requested Party and it shall be confirmed by a receipt signed and dated by the person named or by a certificate from the competent authority effecting the delivery. Either of those documents shall be transmitted to the requesting Party and, if delivery cannot be effected, the reasons shall be stated.
3. If the purpose of the request is the notification of a judicial decision, such notification shall be made in the manner prescribed by the legislation of the requested Party concerning judicial procedures.

Article 35

1. If the judicial authorities or the Public Prosecutor of either Party believe that the personal appearance of a person charged with an offence, of a witness or of

an expert in its territory is particularly necessary, they shall so state in the request for the summons.

2. A request for the purpose of summoning 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 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.

3. The requested Party shall serve the summons in accordance with the request received, but any warning clauses or penalties prescribed in the case of failure to appear shall not be given effect.

4. The request shall indicate the amount of the travel, subsistence and other allowances to be paid to the person summoned for purposes of his appearance.

Article 36

1. No witness or expert of whatsoever nationality who, in response to a summons, appears before the judicial authorities or the Public Prosecutor of the requesting Party may be prosecuted, detained or subjected to any other restriction of his personal freedom in that Party by reason of an act committed or conviction pronounced prior to his departure from the territory of the requested Party. The same immunity shall apply to a person charged, except for the acts mentioned in the summons.

2. The immunity provided for in the foregoing paragraph shall cease if the person charged, witness or expert voluntarily remains in the territory of the requesting Party for more than 30 days after the date on which his presence ceases to be required by the judicial authorities or the Public Prosecutor of that Party.

Article 37

If the purpose of the request is to obtain a statement from the person charged, witness or expert in the requested Party, that Party shall serve the summons subject to the warning clauses prescribed in its own legislation.

Article 38

1. If the summons to make a statement to the authorities of the requesting Party refers to a person detained or imprisoned in the territory of the requested Party, it shall grant that request only with the consent of the detainee and provided that the requested Party believes that no important reasons exist not to effect the transfer.

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 39

1. When either Party requests of the other Party extracts from the judicial records of a person, it must specify the reason for the request. Those records shall be transmitted to it unless this is prohibited under the legislation of the requested Party.

2. Without prejudice to the foregoing, 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 40

1. Requests for assistance shall contain the following particulars:

(a) The name of the authority which issued the request and the nature of the decision,

(b) The offence to which the proceedings relate,

(c) Wherever possible, the identity and nationality of the accused or convicted person,

(d) A precise description of the assistance being requested and any information deemed useful to facilitate the fulfilment of the request.

2. Requests for assistance issued for a purpose other than the mere delivery of articles or documents shall also contain a brief statement of the facts and the charges, if any.

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 41

1. The request for assistance shall be transmitted through the diplomatic channel. Notwithstanding, the Parties may appoint other authorities empowered to send and receive such requests.

2. The Parties may instruct their consuls to execute the formalities permitted under the legislation of the receiving State.

Article 42

1. Any report sent by a contracting Party for the purpose of initiating proceedings before the courts of the other Party shall be communicated through the channels prescribed in the preceding article.

2. The requested Party shall notify the requesting Party of the response to the report and shall send it a copy of the decision rendered at the appropriate time.

TITLE III

FINAL PROVISIONS

Article 43

1. Legalization of the signatures of the authorities and officials of the contracting Parties appearing on the documents issued in application of this Treaty shall not be required.

2. Copies of documents sent must be certified by the competent authorities.

Article 44

1. This Treaty is subject to ratification. The exchange of the instruments of ratification shall take place in the city of Madrid.

2. This Treaty shall enter into force 30 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 7 May 1881¹ shall be abrogated without prejudice to the provisions of paragraph 5 of this article.

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 in accordance with the provisions of the Treaty of 7 May 1881.

DONE at Buenos Aires on 3 March 1987 in two original copies, both being equally authentic.

For the Kingdom of Spain:

[Signed]

FERNANDO LEDESMA BARTRET
Minister of Justice

For the Argentine Republic:

[Signed]

JULIO RAÚL RAJNERI
Minister of Education and Justice

¹ *British and Foreign State Papers*, vol. 72, p. 552.