

No. 32429

**SPAIN
and
PARAGUAY**

Treaty on the transfer of convicted persons. Signed at Asunción on 7 September 1994

Authentic text: Spanish.

Registered by Spain on 27 December 1995.

**ESPAGNE
et
PARAGUAY**

**Traité relatif au transfèrement des personnes condamnées.
Signé à Asunción le 7 septembre 1994**

Texte authentique : espagnol.

Enregistré par l'Espagne le 27 décembre 1995.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF PARAGUAY ON THE TRANSFER OF CONVICTED PERSONS

The Kingdom of Spain and the Republic of Paraguay,

Bearing in mind that the aim of punishment is the social rehabilitation of convicted persons;

Considering that in order to achieve that aim it would be beneficial to afford nationals who have been deprived of their liberty abroad for committing an offence the opportunity to serve their sentence in their country of nationality;

Have agreed as follows:

Article 1

For the purposes of this Treaty:

(a) Sentencing State shall mean the State in which the person who may be transferred is sentenced;

(b) Enforcing State shall mean the State to which the convicted person may be or has already been transferred;

(c) Convicted person shall mean the person who, in the sentencing State, has been sentenced to a penalty or security measure for an offence.

Article 2

1. Penalties or security measures imposed in Spain on nationals of Paraguay may be served in penal institutions of Paraguay or under the supervision of its authorities.

2. Penalties or security measures imposed in Paraguay on nationals of Spain may be served in penal institutions of Spain or under the supervision of its authorities.

3. The transfer may be requested by the sentencing State or by the enforcing State.

Article 3

1. Requests for transfers and replies to such requests shall be made in writing.

2. Each State shall designate, through the diplomatic channel, an authority to perform the functions provided for in this Treaty.

3. In making the decision concerning the transfer of a convicted person, all relevant factors, and the likelihood that the transfer will contribute to his social rehabilitation, shall be taken into account, including the type and seriousness of the crime and the offender's previous criminal record, if any, the state of his health, his

¹ Came into force on 12 September 1995, the date on which the Parties notified each other (on 14 June and 12 September 1995) of the completion of their internal legal requirements, in accordance with article 18.

age and the ties that he may have with the society of the enforcing State through his residence, presence in its territory, family connections or other reasons.

4. The decisions taken by a State pursuant to this Treaty shall be communicated without delay to the other State without any requirement to state the reasons thereof.

Article 4

This Treaty shall apply only on condition that:

1. The acts or omissions which resulted in the sentence are also punishable in the enforcing State, whether or not they are characterized in the same manner.

2. The convicted person is a national of the enforcing State at the time of the request for a transfer.

3. The sentence is final.

4. The convicted person agrees to the transfer or, should he be unable to give his consent, such consent is given by his legal representative.

5. At least one year of the penalty or security measure remains to be served at the time of submission of the request referred to in article 9. In exceptional cases, the Parties may agree to accept a request even when less than one year of the penalty or security measure remains to be served.

6. The solvent convicted person has paid or guaranteed payment, to the satisfaction of the sentencing State, of the fines, legal expenses, civil damages or pecuniary penalties of any kind for which he is liable under the terms of the sentence.

Article 5

1. The competent authorities of the Parties shall inform all convicted persons who are nationals of the other Party of the option available to them under this Treaty and of the possible legal consequences of such a transfer.

2. The convicted person shall expressly indicate his desire to be transferred. The sentencing State shall ensure that, if the enforcing State so desires, it can verify that the convicted person is aware of the legal consequences of such a transfer and that he voluntarily agrees to it.

3. Consent shall be given in accordance with the laws of the sentencing State.

Article 6

1. The convicted person may submit his request for a transfer either to the sentencing State or to the enforcing State.

2. Either State receiving a request from the convicted person for a transfer shall inform the other State as soon as possible.

Article 7

The sentencing State shall inform the enforcing State of:

(a) The convicted person's name, date and place of birth;

(b) The acts that led to the sentence;

(c) The duration and starting and ending dates of the penalty or security measure imposed.

Article 8

The convicted person shall be informed by his diplomatic or consular authorities of any steps taken in the sentencing or enforcing State pursuant to the preceding paragraphs and of the decisions taken by either Party concerning his request for a transfer. To that end, the States shall provide to the said authorities any information that they may request.

Article 9

1. The enforcing State shall attach to the request for transfer:
 - (a) A document certifying that the convicted person is a national of that State;
 - (b) A copy of the legal provisions evincing that the acts or omissions that led to the conviction are also offences in the enforcing State;
 - (c) Information on the provisions of article 3, paragraph 3.
2. The sentencing State shall attach to its request for a transfer:
 - (a) A certified copy of the judgement indicating that it is a final sentence;
 - (b) A copy of the legal provisions applied;
 - (c) Information on the length of the sentence or security measure, the time already served and the length of time remaining to be served;
 - (d) A document attesting to the convicted person's consent to the transfer;
 - (e) Such other additional information as may be useful to the authorities of the enforcing State in determining how the convicted person should be treated with a view to his social rehabilitation.
3. Either State may request from the other Party the documents and information referred to in paragraphs 1 and 2 of this article prior to making a request for a transfer.

Article 10

1. Once the transfer is effected, the sentence shall be executed in accordance with the laws of the enforcing State.
2. In the execution of the sentence, the enforcing State:
 - (a) Shall be bound by the length of the penalty or security measure;
 - (b) Shall be bound by the terms of the judgement;
 - (c) May not convert the penalty or security measure into a pecuniary sanction.

Article 11

The sentencing State alone may grant amnesty, a pardon or commutation of the penalty or security measure in accordance with its Constitution and its laws.

However, the enforcing State may, on the basis of a reasoned petition, which shall be favourably considered, request that the sentencing State grant a pardon or commute the penalty.

Article 12

1. The sentencing State shall retain exclusive jurisdiction with regard to any other procedure aimed at revising the judgement handed down.

2. The enforcing State shall desist from enforcing the sentence upon being informed by the sentencing State of any decision or measure that renders the penalty or security measure unenforceable.

Article 13

1. A convicted person delivered for execution of a sentence or security measure under this Treaty may not again be detained, tried or sentenced in the enforcing State for the same offences for which he was sentenced.

2. A convicted person may be tried, convicted or deprived of his freedom for previous acts that were committed prior to and are different from those that led to his transfer under the provisions of any extradition treaty that may exist between the Parties.

Article 14

1. The transfer of the convicted person by the authorities of the sentencing State to those of the enforcing State shall be effected at a place and on a date agreed upon by the Parties.

2. The enforcing State shall be responsible for the transport costs upon assuming custody of the convicted person.

Article 15

The enforcing State shall:

- (a) Inform the sentencing State when the sentence has been served;
- (b) Inform the sentencing State if the convicted person has escaped; and
- (c) Provide any information that the sentencing State may request from it under this Treaty.

Article 16

The convicted person under a suspended sentence or on parole may finish serving his sentence under the supervision of the authorities of the enforcing State.

The enforcing State shall adopt the supervisory measures requested, keep the sentencing State informed of the manner in which they are being implemented and shall immediately inform the sentencing State of the failure by the convicted person to fulfil his obligations.

Article 17

This Treaty shall be applied to the enforcement of sentences imposed either before or after its entry into force.

Article 18

This Treaty shall enter into force on the date on which the Parties inform each other of the completion of their internal legal requirements and shall have an indefinite duration.

However, either Party may terminate it by giving the other Party six months' written notice, in which case ongoing projects subject to the application of the provisions of this Treaty shall not be suspended.

DONE at Asunción on 7 September 1994 in two equally authentic original copies in the Spanish language.

For the Kingdom of Spain:

JOSÉ LUIS DICENTA BALLESTER
Secretary of State for International
Cooperation and for Ibero-America

Ad referendum

For the Republic of Paraguay:

LUIS M. RAMÍREZ BOETTNER
Minister for Foreign Affairs
