

No. 31563

**SPAIN
and
CHILE**

**Treaty concerning extradition and judicial assistance in
criminal matters. Signed at Santiago on 14 April 1992**

Authentic text: Spanish.

Registered by Spain on 30 January 1995.

**ESPAGNE
et
CHILI**

**Traité d'extradition et d'entraide judiciaire en matière
pénale. Signé à Santiago le 14 avril 1992**

Texte authentique : espagnol.

Enregistré par l'Espagne le 30 janvier 1995.

[TRANSLATION — TRADUCTION]

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

The Kingdom of Spain and the Republic of Chile,

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 cooperation,

Bearing in mind the General Treaty of Cooperation and Friendship between the Kingdom of Spain and the Republic of Chile signed in Santiago, Chile, on 19 October 1990,²

Have decided to conclude a treaty concerning extradition and judicial assistance in criminal matters as follows:

TITLE I

EXTRADITION

Article 1

OBLIGATION TO EXTRADITE

The Contracting Parties undertake reciprocally to extradite, subject to the terms and conditions specified in the following articles, persons against whom criminal proceedings have been initiated or who are being sought in order to serve a sentence involving deprivation of liberty.

Article 2

EXTRADITABLE OFFENCES

1. Extradition shall be granted in respect of offences punishable under the laws of both Parties by deprivation of liberty for at least one year.
2. If extradition is requested for the enforcement of a sentence, at least six months of such sentence must remain to be served.
3. If the request refers to several offences, some of which do not meet the requirements of paragraphs 1 and 2 with respect to the length of the sentence, the requested Party may also grant extradition under those paragraphs.

¹ Came into force on 21 January 1995, i.e., 30 days after the exchange of the instruments of ratification, which took place at Madrid on 22 December 1994, in accordance with article 44 (2).

² United Nations, *Treaty Series*, vol. 1653, No. I-28441.

Article 3

MULTILATERAL CONVENTIONS

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

Article 4

FISCAL OFFENCES

In matters involving taxes, duties, customs and foreign currency, extradition may not be denied on the grounds that the laws of the requested Party do not impose the same type of tax or duty or do not contain the same type of regulations in these matters as the laws of the requesting Party, if the offences meet the requirements of article 2.

Article 5

POLITICAL OFFENCES

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, characterize 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 on the life, physical integrity or liberty of a head of State or Government or of a member of his family;

(b) Acts of terrorism;

(c) War crimes and crimes which, under international law, are crimes against the peace and security of mankind.

2. Extradition shall likewise not be granted if the requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of his race, religion, nationality, or political opinion, or that that person's position may be prejudiced for any of those reasons.

Article 6

MILITARY OFFENCES

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

Article 7

EXTRADITION OF NATIONALS

1. Where the person sought is a national of the requested Party, the latter may refuse to grant extradition under its own law. Nationality shall be determined at the

time of the decision concerning extradition, provided that nationality was not acquired for the fraudulent purpose of preventing extradition.

2. Where the requested Party refuses to grant the extradition for the reasons stated in paragraph 1, 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 concerned. To that end, all documents, information and property 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 result of its request.

Article 8

EXTRADITION AND ASYLUM

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 law.

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

Article 9

MANDATORY GROUNDS FOR REFUSAL

Extradition shall be denied:

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

(b) If the person sought has been sentenced or would be liable to be tried in the requesting Party by an extraordinary or *ad hoc* court or tribunal;

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

(d) If the person sought has been tried in the requested Party or in a third State for the offence which gave rise to the request for extradition.

Article 10

DEATH PENALTY AND LIFE IMPRISONMENT

If the offences for which extradition is requested are punishable by the death penalty or life imprisonment, extradition shall be granted only if the requesting Party gives sufficient assurances that the person sought will not be executed and that the maximum sentence to be served will be the most severe short of life imprisonment.

Article 11

OPTIONAL GROUNDS FOR REFUSAL

Extradition may be refused:

(a) If the courts of the requested Party are competent, under its own law, to investigate the offence giving rise to the request for extradition. The requested Party

may, however, grant extradition if it has decided, or should decide, either not to institute proceedings or to terminate any proceedings that have been instituted;

(b) If the offence was committed outside the territory of the requesting Party and the law of the requested Party does 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 when the request for extradition is submitted and is domiciled or resident 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 law of the requested Party.

Article 12

JUDGEMENTS RENDERED “IN ABSENTIA”

If the person sought has been convicted *in absentia*, extradition shall not be granted unless the requesting Party gives assurances that the minimum rights of defence generally accorded to any person accused of an offence were respected in the trial in which he was convicted.

Article 13

RULE OF SPECIALTY

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 for which he was extradited, the requesting Party shall request the appropriate authorization from the requested Party. The latter may require the requesting Party to submit the documents mentioned in article 15.

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

2. Such authorization shall not be required if the person who has been extradited gives his express consent or, having had an opportunity to leave voluntarily the territory of the State to which he has been surrendered, has remained there for more than 30 days or has returned to that territory after leaving it.

Article 14

CHANGE OF DESCRIPTION

Where the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced insofar as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 15

PROCEDURE

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

designation of a central authority competent to receive and transmit requests for extradition.

2. The request for extradition shall be accompanied by:

(a) A copy or transcript of the sentence, committal order, detention order or any other similar decision under the law of the requesting Party, with a summary statement of the acts, place 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, 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.

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

Article 16

ADDITIONAL INFORMATION

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 comply with this time limit, it may apply to the requested Party for an extension.

Article 17

SIMPLIFIED EXTRADITION PROCEDURE

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 being informed of his right to extradition proceedings and the protection such proceedings afford him.

Article 18

DECISION CONCERNING THE EXTRADITION

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

2. Reasons shall be given for any complete or partial refusal.

3. If extradition is granted, the Parties shall arrange for the surrender of the person sought; 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 taken over 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 handed over at the same time as the person is surrendered.

Article 19

POSTPONED OR CONDITIONAL SURRENDER

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 postponed if, for sufficiently serious personal reasons, it would be incompatible with humanitarian interests.

Article 20

REMEDYING FORMAL DEFECTS

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

Article 21

CONVEYANCE IN TRANSIT

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 request for extradition. 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 costs it may incur in this connection.

2. A request for conveyance in transit shall be unnecessary if air transport is used and no landing in the Territory of the transit State is scheduled.

Article 22

RE-EXTRADITION TO A THIRD STATE

Except as provided for in article 13, paragraph 2, re-extradition to a third State shall not be granted without the consent of the Party which agreed to the extradition.

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

Article 23

CONCURRENT REQUESTS FOR EXTRADITION

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. If 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 there are particular circumstances that recommend otherwise.

The particular circumstances which may be taken into account include the nationality and habitual domicile of the person sought, whether or not a treaty exists, the dates of the respective requests and the possibility of subsequent extradition to another State.

3. If the requests are made for different 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

PROVISIONAL ARREST

1. In cases of urgency, the competent authorities of the requesting Party may apply for the provisional arrest of the person sought.

2. The application for provisional arrest shall contain a statement of the existence of one of the decisions mentioned in article 15, paragraph 2, and a statement 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 its commission and, as far as possible, the identity of the person sought.

3. The application for provisional arrest shall be transmitted by post or telegraph or by any other means that affords a record 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 as a matter of urgency, of the arrest and the time limit within which the request for extradition must be submitted, which may not be less than 40 days or more than 80 days.

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 request for extradition has not been received within 40 days after the provisional arrest.

6. If the person sought has been released upon the expiration of the time limit mentioned in the previous paragraph, the requesting Party may not apply again for his provisional arrest without submitting a formal request for extradition.

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

Article 25

SURRENDER OF PROPERTY

1. At the request of the requesting Party, the requested Party shall, insofar as its law permits, seize and surrender documents, articles and other property:

(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 his arrest or have been discovered subsequently.

2. Such documents, money and articles shall be handed over even if the extradition agreed to cannot be carried out owing to 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 property. Where such rights exist, the property shall be returned to the requested Party free of charge as soon as possible.

Article 26

COSTS

Costs incurred in the Territory of the requested Party by reason of extradition shall be borne by that Party, except for those relating to the international transport of the person sought, which shall be borne by the requesting Party.

Article 27

INTERVENTION IN THE REQUESTED STATE

The requesting Party may designate a duly authorized representative 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

OBLIGATION TO PROVIDE ASSISTANCE

1. The Parties undertake, in accordance with the present Treaty, to afford each other mutual assistance, in inquiries and formalities relating to any criminal proceedings instituted in respect of 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 property and to search premises only in the case of acts which are also considered offences under the law of the requested Party.

Article 29

FOUNDATIONS FOR REFUSAL

Judicial assistance may be refused:

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

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

(c) If the requested Party considers that execution of the request would clearly prejudice its public order.

Article 30

FORM OF THE REQUEST

1. Requests for assistance shall be in the form of a letter of request or letter rogatory.

2. Requests for assistance shall be executed in accordance with the law 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

PROVISION OF INFORMATION TO THE REQUESTING PARTY

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

Article 32

TYPES OF REQUESTS

The requested Party shall execute requests 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

PROCEDURES FOR THE PROPER TRANSMISSION OF DOCUMENTS

1. If the request is issued for the purpose of obtaining records, evidence or any kind of documents in general, the requested Party shall transmit certified copies or

photocopies only; it may, at its own discretion, transmit any originals that may be specifically requested by the requesting Party.

2. The requested Party may refuse to send property, records or original documents requested if its law does not permit it to provide them.

3. Property or documents transmitted in execution of a request shall be returned as soon as possible, unless the requested Party waives that requirement.

Article 34

CERTIFICATION OF EXECUTION OF THE REQUEST

1. The requested Party shall hand over to the person named the property or documents relating to judicial proceedings sent to it for that purpose by the requesting Party.

2. Delivery shall be carried out in any manner prescribed by the law of the requested Party and shall be confirmed by a receipt signed and dated by the person named or by a certificate from the competent authority effecting 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 law of the requested Party concerning judicial procedures.

Article 35

SUMMONS AND APPEARANCE IN THE REQUESTING PARTY

1. If the judicial authorities or the Public Prosecutor of either Party deem it particularly necessary for a person charged with an offence, a witness or an expert to appear personally in its Territory, they shall so state in the request for the serving of a summons.

2. Requests for the summoning of 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

IMMUNITY

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 liberty 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

APPEARANCE IN THE REQUESTED PARTY

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 in its own law.

Article 38

SUMMONS AND APPEARANCE OF DETAINEES OR PRISONERS IN THE REQUESTING PARTY

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, the latter shall grant that request only with the consent of the detainee and provided that the requested Party believes that there are no legal or judicial impediments to the transfer.

2. The requesting Party shall hold the person transferred in custody and shall return him as soon as the formality for which the transfer was sought has been completed.

3. Any costs arising from the application of this article shall be borne by the requesting Party.

Article 39

TRANSMISSION OF EXTRACTS FROM JUDICIAL RECORDS AND INFORMATION ON SENTENCES

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 law of the requested Party.

2. Without prejudice to the foregoing, the Parties shall inform each other on an annual basis of any enforceable sentences which the judicial authorities of either Party have imposed on nationals of the other Party.

Article 40

REQUIREMENTS FOR THE REQUEST

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 requested and any information deemed useful to facilitate compliance with the request.
2. Requests for assistance issued for a purpose other than the mere handing over of property 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

TRANSMISSION OF THE REQUEST

1. The request for assistance shall be transmitted through the diplomatic channel. Notwithstanding, the Parties may designate other authorities empowered to send and receive such requests.
2. The Parties may instruct their consuls to execute the formalities permitted under the law of the receiving State.

Article 42

REPORTS WITH A VIEW TO PROCEEDINGS

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 at the appropriate time a copy of the decision rendered.

FINAL PROVISIONS

Article 43

GENERAL PROVISIONS

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

ENTRY INTO FORCE AND TERMINATION

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 de-

nounces 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 on the reciprocal extradition of malefactors of 30 December 1895 and the Protocol amending article 14 thereof of 1 August 1896 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 provisions, 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 30 December 1895.

DONE at Santiago on 14 April 1992 in two original copies, both being equally authentic.

For the Kingdom of Spain:
TOMAS DE LA QUADRA-SALCEDO
Minister of Justice

For the Republic of Chile:
ENRIQUE SILVA CIMMA
Minister for Foreign Affairs