

No. 31679

**SPAIN
and
REPUBLIC OF KOREA**

Treaty on extradition. Signed at Seoul on 17 January 1994

Authentic texts: Spanish, Korean and English.

Registered by Spain on 15 March 1995.

**ESPAGNE
et
RÉPUBLIQUE DE CORÉE**

Traité d'extradition. Signé à Séoul le 17 janvier 1994

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Enregistré par l'Espagne le 15 mars 1995.

TREATY¹ ON EXTRADITION BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF KOREA

The Kingdom of Spain and the Republic of Korea (hereinafter referred to as "the Contracting Parties"),

Desiring to make more effective the co-operation of the two countries in the prevention and repression of crime by concluding a treaty on extradition,

Have agreed as follows:

Article 1 Obligation to Extradite

Each Contracting Party agrees to extradite to the other, upon request and in accordance with the provisions of this Treaty, any person who is wanted in the requesting Party for prosecution for an extraditable offence or for the execution of a sentence in respect of such an offence.

Article 2 Extraditable Offences

1. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period of at least one year or by a more severe penalty.

2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six months in the sentence remains to be served.

3. In determining whether an offence is an offence punishable under the laws of both Contracting Parties, it shall not matter whether:

- (a) The laws of the Contracting Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology;

¹ Came into force on 15 February 1995, i.e., 30 days after the Contracting Parties had notified each other (on 11 July 1994 and 16 January 1995) of the completion of their respective requirements, in accordance with article 18 (1).

- (b) Under the laws of the Contracting Parties the constituent elements of the offence differ, it being understood that the totality of the conduct as presented by the requesting Party shall be taken into account.

4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, customs duty, or exchange regulation of the same kind as the law of the requesting Party.

5. If the request for extradition includes several separate offences each of which is punishable under the laws of both Contracting Parties, but some of which do not fulfil the other conditions set out in paragraphs 1 and 2 of this Article, the requested Party may grant extradition for latter offences provided that the person is to be extradited for at least one extraditable offence.

Article 3 Mandatory Refusal of Extradition

1. Extradition shall not be granted in any of the following circumstances:

- (a) When the offence for which extradition is requested is regarded by the requested Party as a political offence or an offence connected with a political offence;
- (b) When the person whose extradition is requested is being proceeded against or has been tried and discharged or punished in the requested Party for the offence for which his extradition is requested;
- (c) When the person whose extradition is requested has, under the law of either Contracting Party, become immune from prosecution or punishment for any reason, including lapse of time;
- (d) When the requested Party has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, political opinions or sex, or that that person's position may be prejudiced for any of those reasons;
- (e) When the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law; and

- (f) When the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting Party by an extraordinary or ad hoc court or tribunal. For the purposes of this sub-paragraph, a constitutionally established and constituted court or tribunal is not to be regarded as an extraordinary or ad hoc court or tribunal.
2. For the purposes of the application of paragraph 1 (a) of this Article, reference to a political offence shall not include the following:
- (a) The taking or attempted taking of the life or an attack on the person of a Head of State or Head of Government or a member of his or her family;
 - (b) Any offence in respect of which the Contracting Parties have assumed an obligation, pursuant to any multilateral international convention, to take prosecutorial action where they do not extradite; and
 - (c) An offence against the law relating to terrorism.

Article 4 Discretionary Refusal of Extradition

Extradition may be refused in any of the following circumstances:

- (a) When the offence for which extradition is requested is regarded under the law of the requested Party as having been committed in whole or in part within its territory;
- (b) When the offence for which extradition is requested carries the death penalty under the law of the requesting Party, unless that Party gives such assurance as the requested Party considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out;
- (c) When the person whose extradition is requested has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;
- (d) When the requested Party, while also taking into account the nature of the offence and the interests of the requesting Party, considers that, because of the personal circumstances of the person sought, the extradition of that person would be incompatible with humanitarian considerations;
- (e) When the offence for which extradition is requested has been committed outside the territory of either

Contracting Party and the law of the requested Party does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances; and

- f) When the person whose extradition is requested has not received or would not receive in the requesting Party the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights.

Article 5 Postponed or Conditional Surrender

1. The requested Party may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such case the requested Party shall advise the requesting Party accordingly.
2. The requested Party may, instead of postponing surrender, temporarily surrender the person sought to the requesting Party in accordance with conditions to be determined by mutual agreement between the Contracting Parties.

Article 6 Extradition of Nationals

1. Each Contracting Party shall have the right to refuse extradition of its nationals.
2. If the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 7, paragraph 1. The requesting Party shall be informed of the result of its request.
3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7 Channel of Communication and Required Documents

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel.

2. A request for extradition shall be accompanied by the following:

(a) In all cases,

- (i) as accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;
- (ii) the text of the relevant provision of the law creating the offence or, where necessary, a statement of the relevant law as to the offence and a statement of the penalty that can be imposed for the offence;

(b) When the person is accused of an offence,

- (i) a warrant issued by a court or other competent judicial authority for the arrest of the person or an authenticated copy of that warrant;
- (ii) a statement of the offence for which extradition is requested;
- (iii) a description of the conduct constituting the alleged offence, including an indication of the time and place of its commission.

(c) When the person has been convicted of an offence,

- (i) a statement of the offence for which extradition is requested and a description of the conduct constituting the offence;
- (ii) the original or authenticated copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served.

3. The documents submitted in support of a request for extradition shall be admitted in evidence in any extradition proceedings in the requested Party when:

- (a) They are signed by a judge or other judicial officer of the requesting Party; or
- (b) They are sealed by the official seal of competent authority of the requesting Party.

4. The documents to be submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested Party or in another language acceptable to that Party.

Article 8 Additional Information

1. If the requested Party considers that the information furnished in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.
2. If the person whose extradition is requested is under arrest and the additional information furnished is not sufficient or if such information is not received within the period specified by the requested Party, the person shall be released from custody. However, such release shall not preclude the requesting Party from submitting another request for the extradition of the person in respect of the same or any other offence.

Article 9 Provisional Arrest

1. In case of urgency the requesting Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. An application for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requesting Party.
2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of the relevant documents mentioned in paragraph 2 of Article 7 authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence including the time left to be served and a concise statement of the conduct constituting the alleged offence.
3. The requested Party shall decide on the application in accordance with its law and communicate its decision to the requesting Party without delay.
4. The person arrested upon such an application shall be set at liberty if the requesting Party fails to present the request for extradition, accompanied by the documents specified in paragraph 2 of Article 7, within sixty days from the date of arrest.
5. The release of the person pursuant to paragraph 4 of this Article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

Article 10
Simplified Extradition Procedure

The requested Party, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

Article 11
Conflicting Requests

If a Contracting Party receives request for extradition for the same person either for the same offence or for different offences from both the other Contracting Party and a third State, it shall, at its discretion, determine to which of those States the person is to be extradited. The requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the existence of a treaty on extradition, the nationality and the ordinary place of residence of the person sought, and the possibility of subsequent extradition to another State.

Article 12
Decision on the Request

1. The requested Party shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting Party.
2. Reasons shall be given for any complete or partial refusal of the request.

Article 13
Surrender of the Person

1. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.
2. The person shall be removed from the territory of the requested Party within such reasonable period as the requested Party specifies and, if the person is not removed within that period, the requested Party may release the person and may refuse to extradite that person for the same offence.
3. If circumstances beyond its control prevent a Contracting Party from surrendering or removing the person to be extradited, it shall notify the other Contracting Party. The Contracting Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of this Article shall apply.

Article 14 **Surrender of Property**

1. To the extent permitted under the laws of the requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the requested Party that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting Party so requests, be surrendered if extradition is granted.
2. The property mentioned in paragraph 1 of this Article shall, if the requesting Party so requests, be surrendered to the requesting Party even if the extradition, having been agreed to, cannot be carried out owing to the death or escape of the person sought.
3. Where the law of the requested Party or the rights of third parties so require, any property so surrendered shall be returned to the requested Party free of charge after the completion of the proceedings, if that Party so requests.
4. When the said property is liable to seizure or confiscation in the requested Party, it may retain it or temporarily hand it over.

Article 15 **Rule of Speciality**

1. A person who has been extradited under this Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting Party for any offence committed before surrender other than:
 - (a) An offence for which extradition was granted;
 - (b) Any other offence in respect of which the requested Party consents. Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with this Treaty.
2. A request for the consent of the requested Party under this Article shall be accompanied by the documents mentioned in paragraph 2 of Article 7 and a legal record of any statement made by the extradited person with respect to the offence.
3. Paragraph 1 of this Article shall not apply if the person has had an opportunity to leave the requesting Party and has not done so within forty-five days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting Party after leaving it.

Article 16 Transit

1. Where a person is to be extradited to a Contracting Party from a third State through the territory of the other Contracting Party, the Contracting Party to which the person is to be extradited shall request the other Contracting Party to permit the transit of that person through its territory.
2. Upon receipt of such a request, which shall contain relevant information, the requested Party shall deal with this request pursuant to its own law. The requested Party shall grant the request expeditiously unless its essential interests would be prejudiced thereby.
3. Transit of a national, within the meaning of Article 6, of a Party requested to grant transit may be refused.
4. Permission for the transit of a person surrendered shall include authorization for accompanying officials to hold that person in custody or request and obtain assistance from authorities in the Party of transit in maintaining custody.
5. Where a person is being held in custody pursuant to paragraph 3 of this Article, the Contracting Party in whose territory the person is being held may direct that the person be released if transportation is not continued within a reasonable time.
6. Paragraph 1 of this Article does not apply where air transport is used and no landing in the territory of the Contracting Party of transit is scheduled. In the event of an unscheduled landing, the Contracting Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for ninety six hours, pending receipt of the transit request to be made in accordance with paragraph 1 of this Article.

Article 17 Expenses

1. The requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.
2. The requested Party shall bear the costs incurred in its territory in connection with the seizure and surrender of property, or the arrest and detention of the person whose extradition is sought.
3. The requesting Party shall bear the expense incurred in conveying the person from the territory of the requested Party.

Article 18
Entry into Force and Termination

1. This Treaty shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Treaty have been accomplished.
2. This Treaty shall apply to requests made after its entry into force, even if the relevant conduct occurred prior to that date.
3. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Contracting Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Treaty.

DONE in duplicate at Seoul this 17 day of January 1994 in the Spanish, the Korean and the English languages all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Kingdom of Spain:



Minister of Foreign Affairs
JAVIER SOLANA MADARIAGA

For the Republic of Korea:



Minister of Foreign Affairs
HAN, SUNG-JOO