

No. 33127

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**SPAIN
and
EL SALVADOR**

**Treaty on the transfer of convicted persons. Signed at San
Salvador on 14 February 1995**

Authentic text: Spanish.

Registered by Spain on 30 August 1996.

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**ESPAGNE
et
EL SALVADOR**

**Traité relatif au transfèrement des personnes condamnées.
Signé à San Salvador le 14 février 1995**

Texte authentique : espagnol.

Enregistré par l'Espagne le 30 août 1996.

[TRANSLATION — TRADUCTION]

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

The Kingdom of Spain and the Republic of El Salvador,

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 sentences 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 convicted;

(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 the Republic of El Salvador may be served in penal institutions of the Republic of El Salvador or under the supervision of its authorities.

2. Penalties or security measures imposed in the Republic of El Salvador 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 or by the convicted person.

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 offence and the offender's previous criminal record, if any, the state of his health, his

¹ Came into force on 30 June 1996 by the exchange of instruments of ratification at San Salvador, in accordance with article 17.

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 give the reasons therefor.

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, provided that the elements of the offence are the same.

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

7. The convicted person is not domiciled in the sentencing State.

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 requests, 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.

3. The sentencing State shall inform the enforcing State whether it has granted or denied the request for transfer, and shall inform the convicted person of the decision.

If the request is denied, the reasons for the decision shall be given, in particular if it is based on an omission or error in a formal or substantive requirement.

If the reason for the denial is an omission or error in a formal requirement, the convicted person may resubmit his request after remedying the omission or error.

Article 7

The sentencing State shall inform the enforcing State of:

- (a) The convicted person's name and 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 matters covered in 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 penalty or security measure, the time already served and the length of the 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 procedures 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 measures unenforceable.

Article 13

1. A convicted person delivered for execution of a penalty 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 which has been in force since 1885.

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 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 which 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 immediately inform the sentencing State of the failure by the convicted person to fulfil his obligations.

Article 17

This Treaty shall be subject to ratification and shall enter into force on the last day of the month following the one in which the instruments of ratification are exchanged.

This Treaty shall have an indefinite duration.

Either Party may terminate it by giving written notice through the diplomatic channel. The termination shall take effect on the last day of the sixth month after such notice has been given.

IN WITNESS WHEREOF, the plenipotentiary representatives of the two Governments sign this Treaty *ad referendum*. Done in the city of San Salvador, Republic of El Salvador, on 14 February 1995, in two copies in the Spanish language, both being equally authentic.

For the Kingdom
of Spain:

JAVIER SOLANA MADARIAGA
Minister for Foreign Affairs

For the Republic
of El Salvador:

OSCAR ALFREDO SANTAMARÍA
Minister for Foreign Relations