

No. 33706

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**SPAIN
and
ECUADOR**

**Agreement on the serving of criminal sentences. Signed at
Quito on 25 August 1995**

Authentic text: Spanish.

Registered by Spain on 18 April 1997.

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**ESPAGNE
et
ÉQUATEUR**

**Convention pour l'accomplissement des condamnations
pénales. Signé à Quito le 25 août 1995**

Texte authentique : espagnol.

Enregistré par l'Espagne le 18 avril 1997.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF ECUADOR ON THE SERVING OF CRIMINAL SENTENCES

The Kingdom of Spain and the Republic of Ecuador, hereinafter called the Parties, motivated by their historical ties;

Desiring to promote and improve their mutual cooperation with respect to the administration of justice;

Inspired by the wish to contribute to the full social rehabilitation of sentenced offenders,

Have agreed as follows:

Article I

DEFINITIONS

For the purposes of this Agreement,

1. Sending State: the Party from which the sentenced person is to be transferred.
2. Receiving State: the Party to which the sentenced person is to be transferred.
3. Sentence: the final judgement imposed on a person as punishment for the commission of an offence. A judgement is understood to be firm and final when no appeal is pending against it or when the time limit set for such an appeal has lapsed.
4. Sentenced person: the person who, in the territory of one of the Parties, will serve or is serving a sentence.

Article II

GENERAL PRINCIPLES

In conformity with the provisions of this Agreement:

(a) Sentences or security measures involving deprivation of liberty imposed in one of the Parties on nationals of the other may be served by the sentenced person in the State of which he is a national; and

(b) The Parties undertake to extend to each other the broadest possible cooperation with respect to the transfer of sentenced persons.

¹ Came into force on 10 March 1997 by the exchange of the instruments of ratification, which took place at Madrid, in accordance with article XI.

Article III

CONDITIONS FOR THE APPLICATION OF THE AGREEMENT

This Agreement shall be applied solely under the following conditions:

1. That there exists a firm and final judgement as defined under article I, paragraph 3, of this Agreement.
2. That the sentenced person expressly gives his consent to the transfer, having been previously informed of the legal consequences thereof.
3. That the act for which the person has been sentenced is also an offence in the receiving State. In this regard, nominal differences or differences that do not affect the nature of the offence shall not be taken into consideration.
4. That the sentenced person is a national of the receiving State.
5. That at the time of the request for transfer the duration of the sentence to be served is at least one year.
6. That the enforcement of the sentence does not contravene the internal legal order of the receiving State.
7. That the sentenced person has complied with the terms of the sentence other than the deprivation of liberty and including civil liability, unless he has been declared insolvent.

Article IV

PROVISION OF INFORMATION

1. Each of the Parties shall explain the substance of this Agreement to any sentenced person who stands to benefit from its provisions.
2. The Parties shall keep the sentenced person informed of any proceedings relating to his transfer.

Article V

TRANSFER PROCEDURE

The transfer of the sentenced person from one State to the other shall be subject to the following provisions:

1. The procedure may be initiated by the sending State or by the receiving State. In both cases, the sentenced person must have given his consent or formulated the request for transfer, as the case may be.
2. The request for transfer shall be handled by the central authorities indicated in article X.
3. The request for transfer shall supply the pertinent information confirming that the conditions established in article III have been met.
4. Before the transfer is carried out, the sending State shall permit the receiving State to verify, if it so wishes and through an official designated by the latter State, that the sentenced person has given his consent with full knowledge of the legal consequences thereof.

5. In determining whether to transfer a sentenced person, the Parties shall consider, among other factors, the likelihood of furthering his social rehabilitation; the seriousness of the offence; in all cases, his criminal record; the state of his health; and his family ties and social and other connections in the sending State and the receiving State.

6. The sending State shall provide the receiving State with an authenticated copy of the sentence, along with information on the time already served by the sentenced person and any time accruing to him for such reasons as work, good conduct or pre-trial confinement. The receiving State may request any additional information that it deems relevant.

7. The delivery of the sentenced person by the sending State to the receiving State shall occur in a place agreed upon by the central authorities. The receiving State shall be responsible for the custody of the sentenced person from the time of the delivery onwards.

8. All costs arising from the transfer of the sentenced person to the place where he is delivered into the custody of the receiving State shall be borne by the sending State.

9. The receiving State shall bear all costs arising from the transfer of the sentenced person from the time at which he is delivered into its custody.

Article VI

REFUSAL OF THE REQUEST FOR TRANSFER

If one of the Parties does not approve the transfer of a sentenced person, it shall immediately communicate its decision to the requesting State and shall explain the reason for its refusal whenever feasible and appropriate.

Article VII

RIGHTS OF THE SENTENCED PERSON AND SERVING OF THE SENTENCE

1. The sentenced person who has been transferred under the provisions of this Agreement may not be again detained, tried or convicted in the receiving State for the same offence that gave rise to the sentence imposed by the sending State.

2. Without prejudice to the provisions of article VIII of this Agreement, the sentence of the transferred person shall conform to the laws and procedures of the receiving State, including the application of any provisions with respect to a reduction in the length of the prison sentence and alternative forms of serving the sentence. The receiving State shall not apply any sentence in such a way as to extend its duration beyond the date on which it was due to conclude under the terms of the sentence imposed by the court of the sending State.

3. The authorities of the sending State may, through the central authorities, request reports on the status of the sentence of any person transferred to the receiving State under the terms of this Agreement.

*Article VIII*REVIEW OF THE SENTENCE AND CONSEQUENCES
THEREOF IN THE RECEIVING STATE

The sending State shall retain full jurisdiction over the review of any sentence imposed by its courts. It shall likewise retain the power to commute such sentence or to grant the sentenced person a pardon or amnesty, and the receiving State may make requests to that effect, giving reasons. On receiving notification of any such decision, the receiving State must immediately take the appropriate measures.

Article IX

APPLICATION OF THE AGREEMENT IN SPECIAL CASES

This Agreement shall also be applicable to persons subject to supervision or other measures under the laws of one of the Parties relating to juvenile offenders. Consent for the transfer must be obtained from the person legally empowered to grant it.

This Agreement may be applied with respect to persons whom the authority concerned has declared incompetent. In such cases, the Parties shall agree on the type of treatment to be given to the transferred person in accordance with their domestic legislation. Consent for the transfer must be obtained from the person legally empowered to grant it.

Article X

CENTRAL AUTHORITIES

Prior to the entry into force of this Agreement, the Parties shall notify each other through the diplomatic channel of the central authorities they have designated to be responsible for its application.

Article XI

This Agreement shall enter into force on the date of the exchange of the instruments of ratification.

Article XII

This Agreement shall have an indefinite duration and may be denounced through the diplomatic channel. Such denunciation shall take effect six months after it has been received.

The provisions of this Agreement shall nevertheless continue to apply to sentenced persons that have been transferred until they have finished serving their sentences.

Requests for transfer being processed at the time of the denunciation of this Agreement shall be followed through and executed, unless the Parties agree otherwise.

IN WITNESS WHEREOF this Agreement has been signed in two equally authentic copies.

DONE at Quito, on 25 August 1995.

For the Kingdom
of Spain:

JULIO ALBI DE LA CUESTA
Ambassador of Spain

For the Republic
of Ecuador:

GALO LEORO FRANCO
Minister for Foreign Affairs
