

Treaties and Other International Agreements Involving Questions of Private International Law to which Spain is a Party, 1998

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This survey covers the treaties and other international agreements published in the *Boletín Oficial del Estado* (Official Journal of the State) during 1998. Its purpose is to record the legal consequences of such agreements and instruments for Spain, such as signature, ratification or accession, entry into force, provisional application, reservations or declarations, territorial application, personal sphere of application, material scope, termination, abrogation and relations with others treaties or agreements.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

III. PROCEDURE AND JUDICIAL ASSISTANCE

– Convention between Spain and Uruguay on judicial cooperation, done at Montevideo on 30 April 1987 (*BOE* 103, 30.4.98).

Entry into force: 30 April 1998.

Note: “TITLE I. *Scope of the Convention*

Article 1.

The present Convention is applicable to court procedure, judicial decisions and arbitral awards, except for the following matters:

- a) The status and capacity of persons and family rights with respect to judgements establishing or declaring such statuses or rights, not including decisions on financial liabilities deriving from a declaration of compliance with art. 5 point 4 of the present Convention (the courts of the State Party in which the plaintiff has his usual domicile or habitual residence shall have jurisdiction)
- b) Maintenance obligations with respect to minors.
- c) Winding-up, bankruptcy, and similar proceedings
- d) In Social Security matters

e) Damage of nuclear origin.

Article 2.

1. The present Convention is applicable to arbitral awards and to any decision issued by the Courts of the States Parties, whether judgements, court settlements ending the proceedings, writs, communiqués, orders or any other similar resolution. This Convention is deemed to include provisional measures issued by the Courts of one of the States Parties, which must be abided by in the other State Party.

2. The Convention is also applicable to decisions pronounced in 'voluntary' jurisdiction.

3. It shall likewise be applicable to the resolutions of administrative tribunals and contentious-administrative courts for the purposes of TITLE V.

4. Criminal judgements referring to compensation for damage deriving from the crime shall likewise be deemed to be included in the Convention.

(...)

TITLE IV. On equal procedural treatment.

Article 16.

Natural persons of Spanish nationality shall enjoy the same procedural treatment in the courts of the Eastern Republic of Uruguay as persons domiciled in the territory of this state.

Article 17.

Natural persons having their principal residence in the Eastern Republic of Uruguay shall enjoy the same procedural treatment in the courts of the Kingdom of Spain as Spanish nationals domiciled in Spain.

Article 18.

Legal persons incorporated in one of the States Party shall enjoy the same procedural treatment in the courts of the other State as legal persons incorporated therein.

Legal persons which have complied with all the requirements of establishment with respect to form and content in a State Party shall be deemed to be incorporated in that State.

Article 19.

The equal procedural treatment enshrined in the preceding articles exempts the parties to a suit from furnishing the solvency bond ('Cautio judicatum solvi').

TITLE V. On mutual judicial cooperation

Article 20.

The States Party shall govern legal aid according to the Inter-American Convention on letters rogatory of 30 January 1975, supplemented by the following provisions:

Article 21.

1. The present Title shall be applicable to petitions or letters of request, issued in civil, mercantile, labour, contentious-administrative actions and proceedings, arbitration proceedings and matters in which the administrative tribunals are competent, for the purpose of:

- a) Performance of acts of communication such as service, summons and citation in the other State Party;
- b) Reception or procurement of evidence and reports;
- c) Non-contentious proceedings such as opening of wills, inventories, appraisals and other similar proceedings;
- d) Attachments.

2. The right of career consular civil servants accredited in both countries is acknowledged to;

- a) Serve national judicial documents to persons in foreign countries.
- b) Execute letters of request in relation to their own nationals.

With respect to nationals of the other State Party or of a third country, this right may only be exercised if the persons in question give their express consent and provided that it does not contravene the laws of the state to which the Consul is accredited.

Under no circumstances may the measures established in paragraph 1.d) be enforced.

Article 22.

The judicial cooperation established in the previous article may only be refused if the requested State deems that:

- a) The intended activity is contrary to public order.
 - b) The content of the activity to be performed does not by nature fall within the scope of the powers vested in the requested authority.
 - c) The authenticity of the document is not proven.
- (...)

TITLE VI. *On information on judicial matters*

Article 27.

1. The Technical General Secretariat of the Ministry of Justice of the Kingdom of Spain, as Central Authority, and the Central Authority on International Judicial Cooperation of the Ministry of Education and Culture of the Eastern Republic of Uruguay, acting in the same capacity, may request information and documents on general aspects of their respective legal systems.(...)

2. Courts or tribunals of any status and nature and the Department of Public Prosecution may request through the Central Authorities information on specific legal aspects of existing proceedings. The request shall be accompanied by a list of significant facts and specific questions.

TITLE VII. *Final provisions*

Article 28.

Denunciation of the 1975 Inter-American Convention on Letters Rogatory by either of the Parties, shall not entail denunciation of the present Agreement in respect of the provisions of the latter which expressly waiver the aforementioned Convention”.

– Convention between Spain and El Salvador on judicial cooperation in criminal matters, done at Madrid on 10 March 1997 (*BOE* 182, 31.7.98).

Ratified by Instrument 3 March 1998

Entry into force: 1 September 1998

Note: CHAPTER I

General provisions

Article 1. Scope

1. The purpose of the present Convention is to ensure mutual judicial cooperation between the competent authorities of both Parties in criminal matters.

2. The Parties shall provide mutual assistance, pursuant to the provisions of the present Convention and in strict compliance with their respective legal systems, for the investigation of offences and cooperation in judicial proceedings related to criminal matters.

3. The present Convention does not empower the authorities or individuals of the requesting Party to perform in the requested Party functions which, according to internal legislation, may be carried out solely by the authorities of the latter, except for the case established in Article 14, paragraph 3.

4. This Convention shall not be applicable to:

a) The arrest of persons for the purpose of extradition, or to extradition requests

b) The enforcement of criminal judgements including the transfer of convicted persons in order that they serve their conviction

c) Assistance to individuals or to third States

5. The present Convention shall be deemed to formalized solely for the purpose of mutual judicial cooperation between the contracting States. The provisions of the present Convention shall not furnish individuals with any rights in respect of the procurement, elimination or exclusion of evidence or the obstruction of compliance with a request.

Article 2. Dual incrimination

Assistance shall be provided even if the cause of the proceedings in the requesting Party is not considered as an offence under the law of the requested Party.

Nonetheless, in order to perform judicial examinations, requisitions, searches and precautionary or definitive measures on assets, the aid shall be provided only if the legislation of the requested Party establishes as an offence the cause for the proceedings in the requesting Party.

Article 3. Scope of the assistance

Assistance shall comprise

a) Notification of proceedings;

b) Receipt and production or practice of evidence, such as testimonies and statements, expert testimonies and examination of persons, assets and places;

c) Location and identification of persons;

d) Notification of persons and experts to appear voluntarily to give statements or testimonies in the requesting Party;

e) Transfer of detainees in order that they appear as witnesses in the

requesting Party or for other purposes expressly stated in the request, pursuant to the present Convention;

f) Cautionary measures on assets;

g) Compliance with other requests relating to assets, including possible transfer of the value of the seized goods definitively;

h) Submission of documents and other items of evidence;

Any other form of assistance pursuant to the purposes of this Convention, provided it is not incompatible with the laws of the requested State.

Article 4. Central authorities

(...)

Article 5. Competent authorities empowered to request assistance

Applications transmitted by a central authority in accordance with the present Convention shall be based on requests for assistance from competent authorities of the requesting Party responsible for the prosecution or investigation of offences

Article 6. Refusal of assistance

1. The requested Party may refuse assistance when:

a) The request refers to an offence established as such in military legislation but not in ordinary criminal legislation

b) The request refers to an offence that is strictly political in nature in the requested Party

c) The person in relation with whom the measure is requested has been absolved or has served his sentence in the requested Party for the offence mentioned in the application, or if the time limit for serving the conviction has lapsed.

d) Fulfilment of the application is contrary to the security, public order or other essential interests of the requested Party

e) The request for assistance contravenes the legal system of the requested Party or does not abide by the provisions of this Convention

f) The investigation has been initiated in order to prosecute or discriminate in any way a person or group of persons for reasons of race, sex, social condition, nationality, religion, ideology or any other form of discrimination

2. (...)

CHAPTER II

Execution of requests

(...)

Article 8. Law applicable

1. The fulfilment of the requests shall be carried out in accordance with the law of the requested Party and pursuant to the provisions of the present Convention

2. On the request of the requesting Party, the requested Party shall provide assistance in accordance with the special manners and procedures stated in the application, unless they are incompatible with its internal legislation.

(...)

CHAPTER IV

Final provisions

Art. 24. *Compatibility with other treaties, agreements or other forms of cooperation*

1. The assistance established in the present Convention shall not prevent each of the Parties from assisting the other pursuant to other international instruments in force between them.

2. This Convention shall not prevent the Parties from developing other types of cooperation in accordance with their respective legal systems”

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS AND DECISIONS

– Convention between Spain and Uruguay on judicial cooperation, done at Montevideo on 30 April.

(See above III)

Note: “TITLE II. Recognition and enforcement

Section 1. Requirements of recognition

(...)

Article 4.

In order for a decision rendered in one State to be recognized in the other, it shall meet the following essential requisites:

a) It has been given by the court considered competent, under the terms of this Convention.

b) It is final and enforceable.

c) Initiation of the proceedings has been notified in a legal manner in accordance with the law of the State in which the judgement was rendered.

(...)

Article 7.

The competence of the court of the State of origin may not necessarily be recognized in the following cases:

a) If the law of the requested empowers its courts exclusively to try the case on the grounds of the matter in question.

b) If the requested State considers itself obliged to recognize an agreement in which exclusive competence has been referred for arbitration.

Article 8.

Recognition and subsequent enforcement, if applicable, may be refused in any of the following cases:

a) If the obligation on which the proceedings are based were unlawful in the requested State.

b) If the decision were manifestly incompatible with the public policy of the requested State.

c) If a suit were awaiting hearing at a court of the said State between the same parties for the same purpose and on the same grounds, unless remedy had been previously resorted to in the State of origin.

d) If a decision had already been pronounced in the requested State or in a third State on the same suit and the said decision could be recognized in the requested state”.

V. INTERNATIONAL COMMERCIAL ARBITRATION

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

VII. ALIENS, REFUGEES AND CITIZENS OF EUROPEAN COMMUNITY

– Additional protocol between Spain and Costa Rica, done at Madrid on 23 October 1997, amending the Convention on Dual Nationality of 8 June 1964 (*BOE* 271, 12.11.98).

Entry into force: 1 December 1998.

Note: “Article 2

Spanish and Costa Rican nationals who have exercised the rights established in the Convention on Dual Nationality of 8 June 1964 between Spain and Costa Rica may express at any time their wish to disassociate themselves from the application of the said Convention, provided they state this wish to the competent authority of the civil registry corresponding to their place of residence. A statement of disassociation does not entail renunciation of the most recently acquired nationality”.¹

VIII. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

IX. FAMILY LAW

¹ This provision is intended to resolve the less favourable treatment received by the Spaniards who availed themselves of the provisions of the 1964 Hispano-Costa Rican Convention on dual nationality and wish to “revive” their “latent” Spanish nationality compared to Spaniards who wish to recover their lost nationality. In the first case, the Convention on dual nationality requires subjects to transfer their domicile to Spain, whereas in the second, article 26 of the *CC* as worded according to Law 29/1995 of 2 November exempts emigrants and children of emigrants from meeting this requirement.

For the same purpose, Spain has adopted an additional protocol with Nicaragua amending the Convention on dual nationality of 25 July 1961, done at Managua on 12 November 1997. This protocol entered into force on 19 March 1999 (*BOE* 24, 29.1.99).

X. SUCCESSION

XI. CONTRACTS

XII. TORTS

XIII. PROPERTY

1. Industrial property

– Announcement made by the Technical Secretariat General of the Ministry of Foreign Affairs on the withdrawal of the reservation made by the Spanish government in the instrument of accession to the Patent Cooperation Treaty of 1970 (*BOE* 36, 11.2.98).

Withdrawal of the reservation effective from 6 September 1997

Note: “Availing itself of the reservation laid down in Article 64.1.a) and b), Spain does not consider itself bound by the provisions of chapter II of the Treaty or by those contained in the Rules”.

XIV. COMPETITION LAW

XV. INVESTMENTS AND FOREIGN EXCHANGE

– Agreement between Spain and Turkey for the mutual promotion and protection of investments, done at Ankara on 15 February 1995 (*BOE* 71, 24.3.98).

Entry into force: 3 March 1998.

Note: See Section on Treaties Involving Questions of Public International Law.

– Agreement between Spain and Ecuador for the mutual promotion and protection of investments, done at Quito on 26 June 1996 (*BOE* 86, 10.4.98).

Entry into force: 18 June 1997.

Note: See Section on Treaties Involving Questions of Public International Law

– Agreement between Spain and Bulgaria for the mutual promotion and protection of investments, done at Sofia on 5 September 1995 (*BOE* 143, 16.6.98 and 161, 7.7.98, [s.e.]).

Entry into force: 22 April 1998.

Note: See Section on Treaties Involving Questions of Public International Law

– Agreement between Spain and Estonia for the mutual promotion and protection of investments, done at Tallin on 11 November 1997 (*BOE* 168, 15.7.98).

Entry into force: 11 July 1998.

Note: See Section on Treaties Involving Questions of Public International Law

– Agreement between Spain and Panama for the mutual promotion and protection of investments, done at Panama on 10 November 1997 (*BOE* 254, 23.10.98 and 277, 19.11.98 [s.e.]).

Entry into force: 31 July 98.

Note: See Section on Treaties Involving Questions of Public International Law

– Agreement between Spain and Croatia for the mutual promotion and protection of investments, done at Madrid on 21 July 1997 (*BOE* 259, 29.10.98).

Entry into force: 17 September 1998

Note: See Section on Treaties Involving Questions of Public International Law

XVI. FOREIGN TRADE LAW

XVII. BUSINESS ASSOCIATION CORPORATION

– Agreement on coproduction and cinematographic relations between Spain and Italy, done at Bologna on 10 September 1997 (*BOE* 254, 23.10.98).

Entry into force: 3.June 1998

Note: Article XIX

The present Agreement ... shall replace the previous Agreement signed at Madrid on 5 November 1966.

(...)

XVIII. BANKRUPTCY

XIX. TRANSPORT LAW

– Agreement between Spain and Rumania on the amendment of 1980 Convention on air transport and annex thereto, done at Madrid on 27 January 1998 (*BOE* 43, 19.2.98).

Entry into force: 27 January 1998

Note: See Section on Treaties involving questions of Public International Law

– Agreement between Spain and Ukraine on air transport, done at Madrid on 7 October 1996 (*BOE* 43, 19.2.98).

Entry into force: 22 April 1998.

Note: See Section on Treaties involving questions of Public International Law

XX. LABOUR LAW AND SOCIAL SECURITY

– Convention between Spain and Chile on Social Security and administrative agreement for the application thereof, done at Madrid on 28 January 1997 (BOE 72, 25.3.98).

Entry into force: 13 March 1998.

Note: The 9 March 1977 convention between Spain and Chile on Social Security and the administrative agreement of 25 May 1982 shall cease to be effective from the entry into force of the present Convention (Article 44)

“TITLE I. *General provisions*

(...)

Article 2. *Scope.*

1. The present Convention shall be applicable:

A) In Spain: To legislation relating to the benefits provided by the Spanish Social Security system with respect to:

a) Healthcare in cases of maternity, common or occupational complaints and accidents, whether or not work-related.

b) Financial benefits for temporary incapacity due to common illness or non-occupational accident and maternity.

c) Disability, old-age, death and survivorship benefits.

d) Family allowances.

e) Financial benefits deriving from traffic accidents and occupational illness.

f) Unemployment benefit.

B) In Chile: To Social Security legislation with respect to:

a) Healthcare in cases of maternity, common complaints and non-occupational accidents included in the public health system.

b) Financial benefits for temporary incapacity due to maternity, common illness or non-occupational accidents covered by the public health system.

c) Healthcare and financial benefits deriving from industrial accidents and occupational illness

d) Invalidity, old-age and death and survivorship benefits established in the New Pension System, based on individual capitalization and on the schemes managed by the *Instituto de Normalización Previsional* (Institute of Insurance Standards).

e) Family allowances

f) Unemployment benefit

2. The present Convention shall also be applicable to future legislation that supplements or modifies the foregoing.

3. (...)

Article 3. *Personal Scope*

The present Convention shall be applicable to working nationals of the contracting Parties who abide by or have abided by the legislation of one or both contracting Parties and to their relatives who are beneficiaries.

Article 4. *Principle of equal treatment*

Nationals of one of the contracting Parties who are self-employed or employed in the territory of the other Party shall be subject to and benefit from the legislation of the said Party in Social Security matters, under the same conditions as nationals thereof.

Article 5. Preservation of vested rights and payment of allowances abroad

1. Unless the Convention states otherwise, pensions and other financial benefits included in Article 2 shall not be subject to reduction, modification, suspension or withholding on the grounds that the beneficiary is located or resides in the territory of the other Party, and shall be paid to him in that territory.

2. The benefits recognized on the basis of this Convention to beneficiaries residing in a third State shall be paid under the same conditions and to the same extent as the nationals residing in this third country.

3. The provisions laid down in the previous paragraphs shall not be applicable to non-contributory benefits under both countries' systems, the granting of which depends on length of residence.

TITLE II. Provisions on applicable law

Article 6. General rule

The workers to whom the present Convention is applicable shall be subject exclusively to the Social Security legislation of the contracting Party in whose territory they render their services, without prejudice to the provisions of Article 7.

Article 7. Special rules and exceptions

The following special rules and exceptions are established with respect to the provisions of Article 6.

1. Workers employed by an undertaking with headquarters in one of the contracting Parties who are sent by that undertaking to the territory of the other Party to perform work of a temporary nature shall be subject to the legislation of the former, provided that the foreseeable duration of the work for which they have been sent abroad does not exceed three years.

Self-employed workers who normally render their services in the territory of one of the Parties in which they are insured and go to perform work in the territory of the other Party shall continue to be subject to the legislation of the former, provided that the foreseeable duration of the work does not exceed three years.

If, owing to unforeseeable circumstances, the duration of the work exceeds three years, the workers shall continue to be subject to the legislation of the first Party for a new period, no longer than a further two years, provided that the Competent Authority of the second Party gives its consent.

2. (...)”.

– Convention between Spain and Ukraine on Social Security, done at Madrid on 7 October 1996 (*BOE* 81, 4.4.98).

Entry into force: 27 March 1998 .

Note: "TITLE I. *General provisions*

(...)

Article 2. *Material Scope*

1. The present Convention shall be applicable

A) In Spain. To the legislation of the Social Security system with respect to:

a) Benefits for temporary incapacity deriving from common illness or non-occupational accidents and maternity.

b) Disability, retirement, death and survivorship benefits.

c) Benefits for traffic accidents and occupational illnesses.

d) Family allowances.

B) In Ukraine: To the legislation of the population's Social Security with respect to:

a) Retirement, disability and survivorship benefits.

b) Allowances for temporary incapacity, pregnancy and childbirth, birth and care of the child.

c) Allowances for industrial accidents and occupational illnesses.

d) Death benefit.

e) Family allowance for children.

f) Welfare benefit.

2. The present Convention shall likewise be applicable to legal provisions amending or supplementing those listed in paragraph 1 of this Article.

3. (...)

Article 3. *Personal Scope* (as in art. 3 of the previous Convention with Chile, this Convention is applicable to workers who are nationals of each of the contracting Parties but with two important additional points)

1. (...) It shall likewise be applicable to persons having the condition of refugees in accordance with the Geneva Convention of 28 July 1951 and to stateless persons according to the Convention of 28 September 1954 residing in the territory of one of the Contracting Parties and to their relatives who are beneficiaries.

2. The Convention shall also be applicable to a worker's beneficiary relatives who are nationals of one of the Contracting Parties, irrespective of the nationality of the worker, provided he has been subject to the legislation of either of the Contracting Parties.

Article 4. *Principle of equal treatment*. (same wording as Article 4 of the previous Convention with Chile).

Article 5. *Preservation of vested rights and payment of benefits abroad* (coincides substantially with Article 5 of the previous Convention with Chile).

Article 6. *General rule on the principle of insurance*. (as in art. 6 of the previous Convention with Chile, the applicable legislation is that of the contracting State in whose territory the work is performed with the particularities and exceptions laid down in art. 7).

Article 7.1. *Particular rules in relation to the principle of insurance*. (Coincides with art. 7.1 of the previous Agreement with Chile except for the duration of the

period the employee spends outside the territory of the headquarters of the undertaking that has engaged him and the period the self-employed worker spends outside the territory where he normally performs his work. In both cases, the period abroad should not exceed two years. Furthermore, in the case of the employee, he must not have been sent to replace another person whose period abroad has ended).

XXI. CRIMINAL LAW

– Extradition treaty between Spain and El Salvador, done at Madrid on 10 March 1997 (BOE 38, 13.2.98).

Ratified by Instrument: 4 February 1994.

Entry into force: 4 February 1998.

Note: “Article 3. *Extraditable offences*

1. (...) Offences punishable under the laws of both contracting States by a penalty consisting of deprivation of liberty for a maximum of at least one year or by a more severe penalty.

2. (...) (However, extradition shall be granted only if a period of at least six months of the penalty remains to be served).

3. (...)

4. When extradition is requested for a person for an offence involving infringement of a legal provision in tax, tariffs or exchange matters, it may not be refused on the grounds that the legislation of the requested Party does not establish the same tax rate or lien or that the tax, tariff or customs regulations are not the same in the requesting Party.

5. (...)

Article 4. Political offences

1. Extradition shall not be granted for offences considered to be political or related offences. Pleading a political end or motive shall not in itself classify the offence as political in nature.

For the purposes of this Treaty, under no circumstances shall the following be considered political offences:

a) Taking or attempted taking of the life of a Head of State or Government or a member of his or her family.

b) Acts of terrorism

c) War crimes and those committed against the peace and security of mankind

2. In relation to paragraph 1.b) of this article, the following shall not be considered as political offences, offences related to political offences or offences inspired by political motives:

a) Attacks against the life, corporal integrity or freedom of persons entitled to international protection, including diplomatic agents.

b) Any serious act of violence directed against the life, physical integrity or freedom of persons.

c) Offences involving abduction, taking of hostages or arbitrary kidnapping.

d) Offences involving the use of bombs, hand grenades, rockets, firearms, or letters and parcels concealing explosives, where such use entails a hazard to persons.

e) Any serious act against property, when such act entails a hazard to persons.

(...)

3. Extradition shall not be granted if the requested Party has reason to assume that the extradition request has been filed with the aim of prosecuting or punishing the person whose extradition is requested for reasons of race, religion, nationality or political opinion, or if the situation of that person may be worsened for those reasons.

Article 5. Reasons for compulsory refusal of extradition

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

a) Where the person whose extradition is requested is being tried for a criminal offence or has been tried and fully absolved or convicted in the requested Party for committing the offence for which extradition is requested.

b) When, pursuant to the law of either of the contracting Parties, the person whose extradition is requested is free of prosecution or punishment for any reason, including prescription of the punishment or criminal suit.

c) Where the offence for which extradition is requested is considered an offence under military legislation but not under ordinary criminal legislation.

d) Where the person whose extradition is requested has been convicted or could be tried and convicted in the requesting Party by a special court or tribunal. For the purpose of this subparagraph, a court created and constituted constitutionally shall not be deemed to be a special court or tribunal.

Article 6. Refusal to extradite nationals.

Each contracting Party shall be entitled to refuse to grant extradition to its own nationals.

Article 7. Reasons for optional refusal of extradition.

1. Extradition may be refused under any of the following circumstances:

a) Where, pursuant to the law of the requested Party, the offence for which extradition is requested has been committed wholly or partly within the territory of that Party.

b) Where the offence for which extradition is requested carries the death penalty in the legislation of the requesting Party, unless this Party gives such assurance in the opinion of the requested Party that the death penalty shall not be imposed or, if it is imposed, it shall not be carried out.

c) Where the person whose extradition is requested has been absolved or convicted definitively in a third State for the same offence for which extradition is requested, and, when he has been convicted, the punishment has been totally served or service can no longer be required.

d) When the requested Party, having taken into consideration the nature of the offence and the interests of the requesting Party, deems that, given the personal circumstances of the person such as age, health, family situation or other similar circumstances, extradition would not be compatible with humanitarian considerations.

e) When the offence for which extradition is requested has been committed outside the territory of either of the two contracting Parties and the requested Party lacks jurisdiction to try offences committed outside its territory in similar circumstances.

f) When the person whose extradition is requested has not been, or is not going to be, tried with the minimum guarantees established in art. 14 of the International Convention on Civil and Political Rights.

2. When the requested Party does not agree to the extradition of a person for any of the reasons stated in this article or in the previous one, it shall, at the request of the requesting Party, submit the case to the competent authorities in order for appropriate court procedure to be taken. For this purpose, documents, information and objects relating to the offence shall be sent free of charge by the means established in article 2. The requested Party shall be informed of the result of its request.

(...)

Article 13. *Requests treated jointly*

When one of the Contracting Parties and a third State request the extradition of the same person, whether for the same offence or for different offences, the other Contracting Party shall decide to which of the said States it will grant the extradition of the aforementioned person. When making its decision, the requested Party shall take into account all the circumstances, particularly the relative seriousness and place of commission of the offences, the respective dates of the requests, the existence of extradition treaties, the nationality and usual place of residence of the person whose extradition is requested, and the possibility of subsequent extradition to another State.

(...)

Article 17. *Rule of speciality*

1. A person who has been extradited pursuant to the present Treaty shall not be tried, convicted, imprisoned or extradited to a third State or subject to any other restriction of personal freedom in the territory of the requesting Party for an offence committed prior to his surrender, except for:

a) An offence for which extradition has been granted.

b) Any other offence, provided that the requested Party gives its consent. Consent shall be given when the offence for which it is requested is in itself cause for extradition pursuant to the present Treaty.

2. (...)."

– Convention between Spain and Russia on the transfer of convicted persons for the serving of punishments consisting of deprivation of liberty, done at Moscow on 16 January 1998 (*BOE* 45, 21.2.98 and 63, 14.3.98 [s.e.].)

Provisional application: 16 January 1998

Note: "Article 1

Pursuant to the present Convention, the Contracting Parties undertake to cooperate with each other to the utmost in the transfer of convicted persons to the

State of which they are nationals or permanent residents, bearing in mind, in the latter case, that such persons should not be nationals of the State in which they are convicted, in order that the remainder of the conviction may be served in that State.

(...)

Article 4.

The transfer of the convicted person pursuant to the present Convention shall not take place if:

1. The judgement is not final or if the person in question is the process of being tried for another criminal case for which judgement is pending.

2. The action for which the person has been convicted does not constitute an offence according to the legislation of the State in which the conviction is served, or would not have constituted an offence if it had been committed in the territory of that State, or is not punishable with privation of liberty.

3. The convicted person or, if incapacitated to express his will freely for reasons of age or physical or mental state, his legal representative, does not give consent thereto.

4. The period of deprivation of liberty remaining to be served by the convicted person at the time the request for transfer is received is less than six months.

In exceptional cases, the Contracting Parties may agree to the transfer even through the period that remains to be served of the penalty is less than six months.

Article 5.

For the enforcement of the present Convention, the competent authority of the Kingdom of Spain shall be the Ministry of Justice and, for the Russian Federation, the Prosecution Service.

The competent authorities shall communicate with each other directly.

(...)

Article 14.

The provisions of the present Convention shall not affect the rights and obligations of the Parties deriving from other international Agreements to which they are both Party.

(...)

Article 17.

The provisions of the present Convention shall likewise be applicable to persons convicted prior to the entry into force of the present Convention"

– Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union, done at Dublin on 27 September 1996 (*BOE*, 47, 24.2.98).

Provisional application between the States, which, like Spain, have formulated the Declaration laid down in art. 18.4 of the Convention²

² The European Union States which have formulated this declaration at the time of writing this review are, in addition to Spain, Germany, Denmark, Finland and Portugal

Note: Declarations by Spain.

Addendum Article 7

“As provided in Article 18, Spain declares in relation to Article 7.2 that it will grant extradition of its nationals provided that the offence also constitutes an offence in Spain and that the requesting State provides guarantees that if convicted they will be transferred without delay to Spain to serve the conviction.

Addendum Article 13

As provided in Article 18, Spain declares in relation to article 13 that in its relations with other Member States which have made the same declaration, requests for supplementary information may be made directly to the judicial authorities which requested the extradition.

Addendum Article 18

As provided in paragraph 4 of article 18, Spain declares that, as far as it is concerned, this Convention shall apply to its relations with Member States that have made the same declaration, taking effect ninety days after the date of deposit of the said declaration following the notification as referred to in paragraph 2 of the same article.

- Agreement between Spain and Venezuela on cooperation in the prevention of the consumption of, and in the repression of illicit trafficking in, narcotic drugs and psychotropic substances, done at Madrid on 24 September 1996 (*BOE* 74, 27.3.98).

Entry into force: 5 March 1998

- Agreement between Spain and Bolivia on cooperation in the prevention of the consumption of, and in the control of trafficking in, narcotic drugs and psychotropic substances, done at La Paz on 10 November 1997 (*BOE* 80, 3.4.98 and 281, 24.11.98).

Provisional application: 10 November 1997

Entry into force: 26 December 1998

- Treaty between Spain and Brazil on the transfer of prisoners, done at Brasilia on 7 November 1996 (*BOE* 84, 8.4.98).

Entry into force: 22 April 1998

Note: “Article 1

1. Punishments consisting of deprivation of liberty imposed in the Kingdom of Spain on nationals of the Federative Republic of Brazil may be served pursuant to the provisions of the present Treaty

2. Punishments consisting of deprivation of liberty imposed on Spanish nationals in the Federative Republic of Brazil may be served pursuant to the provisions of the present Treaty

Article 2 (...)

Article 3

Application of the present Treaty shall be subject to the following conditions:

- a) The offence in respect of which the punishment has been imposed must also constitute an offence in the recipient State.
- b) The prisoner must be a national of the recipient State.
- c) At the time of submission of the request referred to in paragraph three of Article V, at least six months of the penalty must remain to be served.
- d) The judgement must be final.
- e) The prisoner must agree to his transfer.

Article 4

The central authorities responsible for the enforcement of the present Treaty shall be:

On the part of the Kingdom of Spain, the Ministry of Justice; on the part of the Federative Republic of Brazil, the Ministry of Justice.

Article 5 (...)

Article 6 (...)

Article 7 (...)

Article 8

A prisoner who is transferred pursuant to the present Treaty may not be arrested, tried or sentenced in the recipient State for the same offence in respect of which he is punished.

Article 9

1. The present Treaty may extend to persons under surveillance or other measures pursuant to the legislation of one of the Parties in relation to juvenile delinquents. The Parties, pursuant to their respective legislation, must agree on the type of treatment to be provided to the said persons in the case of transfer. Consent for transfer must be obtained from the person who is legally authorized.

2. None of the provisions of the present Article should be interpreted as a limitation of the capacity the Parties may have, irrespective of the present Treaty, to grant or agree to the transfer of juvenile delinquents or other prisoners."

– Treaty between Spain and Colombia on the transfer of convicted persons, done at Santa Fe de Bogota DC, on 2 February 1997 (*BOE* 109, 7.5.98).

Ratified by Instrument: 22 January 1998

Entry into force: 10 April 1998

Note: "Article 2. *Scope*

1. Penalties imposed in one of the States on nationals of the other may be executed in penal establishments of the latter, pursuant to the provisions of the present Treaty.

2. Nationality must be proved when transfer is requested

3. The States party to the present Treaty undertake to cooperate with each other to the utmost in the transfer of convicted persons.

Article 3. *Jurisdiction*

1. The parties designate as central authorities responsible for exercising the functions established in this Treaty the Technical General Secretariat of the

Ministry of Justice for Spain, and the Ministry of Justice for the Republic of Colombia.

2. The convicted person shall continue to serve in the recipient state the penalty or security measure imposed in the transferring State and pursuant to the laws and procedures of the recipient State, with no need for exequatur.

3. The transferring State or the recipient State with the consent of the transferring State, may grant amnesty, pardon or commutation of the penalty or security measure, or adopt any decision or legal measure involving reduction or total cancellation of the penalty or security measures. The requests from the recipient State shall be grounded and examined benevolently by the transferring State.

Only the transferring State may hear and determine the appeal or review.

Article 4. Conditions of applicability

The present Treaty shall be applicable solely under the following conditions:

1. The convicted person is a national of the recipient State.
2. The convicted person requests his transfer or, if the request comes from the transferring state or from the recipient state, the convicted person gives his consent expressly and in writing.
3. The offence for which the person is convicted is not political
4. The decision to repatriate is adopted on a case-by-case basis.
5. The transferring and recipient States undertake to inform the convicted person of the legal consequences of his transfer
7. The acts or omissions which have given rise to the conviction constitute an offence under the rules of the recipient State."

– Agreement between Spain and Chile on cooperation in the prevention of the improper use of, and in the control or illicit trafficking in, narcotics and psychotropic substances, done at Santiago de Chile on 12 November 1996 (*BOE* 121, 21.5.98).

Entry into force: 4 May 1998

– Agreement between Spain and Mexico on cooperation in the prevention of the improper use of, and in fight against illicit trafficking in, narcotics and psychotropic substances, done at Mexico City on 6 November 1997 (*BOE* 152, 26.6.98).

Entry into force: 8 August 1998

– Treaty on extradition between Spain and Costa Rica, done at Madrid on 23 October 1997 (*BOE* 175, 23.7.98 and 229, 24.9.98 [s.e.]).

Entry into force: 30 July 1998

Note: The entry into force of this Treaty abrogates the Treaty on the extradition of offenders between Spain and Costa Rica of 16 November 1896.

The provisions on extraditable offences (Article 3), political offences (Article 4), reasons for compulsory refusal of extradition (Article 5), refusal of extradition of

nationals (Article 6), reasons for optional refusal of extradition (Article 7), requests treated jointly (Article 13) and the specialty rule (Article 17) are worded in almost identically to those on the same questions in the Treaty on extradition between Spain and El Salvador of 10 March 1997, reproduced earlier on in this section.

– Agreement between Spain and Malta on cooperation in the prevention of the illicit use of, and in the fight against the illicit traffic in, narcotic drugs and psychotropic substances, done at Valetta on 28 May 1998 (*BOE* 181, 30.7.98 and 264, 4.11.98).

Provisional application: 28 May 1998

Entry into force: 27 November 1998.

– Convention on judicial cooperation in criminal matters between Spain and El Salvador, done at Madrid on 10 March 1997.
(see above III)

– Extradition treaty between Spain and Panama, done at Panama on 10 November 1997 (*BOE* 213, 5.9.98 and 231, 26.9.98 [s.e.].

Entry into force: 6 September 1998.

Note: This Convention is the same as the aforementioned treaties on extradition (Convention with El Salvador of 19 March 1997 and Convention with Costa Rica of 23 October 1997). Nonetheless, there are some subtle differences with respect to the provisions of the foregoing. Specifically:

“Article 3. *Extraditable offences*

1. For the purpose of the present Treaty, an offence shall be extraditable if it is punishable under the laws of both Contracting Parties by deprivation of liberty for a period of more than one year or by a more serious penalty.

2. When the request for extradition states several offences under the legislation of both contracting Parties but one or more does not meet the requirement relating to the duration of the punishment, the requested Party shall also be empowered to grant extradition for the latter.

3. When the request for extradition refers to a person sentenced to a punishment of deprivation of liberty by the requesting Party for an extraditable offence and this person has evaded justice or absconded in any way, extradition shall only be granted if at least six months of the sentence remain to be served.

(...)

Article 16. *Rule of specialty*

1. The surrendered person may not be detained, imprisoned or tried by the requesting Party for an offence other than the one that gives rise to extradition and was committed prior to the latter, unless the requested Party gives its consent, or the extradited person remains free in the requesting State two months after being tried and absolved for the offence that gave rise to his extradition or after serving the penalty of deprivation of liberty.

2. (...).”

– Convention on laundering, search, seizure and confiscation of the proceeds from crime, done at Strasbourg on 8 November 1990 (*BOE* 252, 21.10.98).

Ratified by Instrument: 6 August 1998.

Entry into force: 1 December 1998

Note: Reservations and declarations

“In accordance with Article 23, the Technical Secretariat General of the Ministry of Justice is designated Central Authority which shall be responsible for sending and answering requests made under this Convention and the transmission of them to the authorities competent for their execution.

In accordance with Article 25.3, Spain reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into one of the official languages of the Council of Europe.

In accordance with Article 32.2., it declares that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

– Convention between Spain and Cuba on the enforcement of criminal judgements, done at Madrid on 23 July 1998 (*BOE* 267, 7.11.98 and 288, 2.12.98 [s.e].

Provisional application: 26 September 1998³

Note: “Article 3.

1. Penalties or security measures consisting of deprivation of liberty imposed in the territory of the Republic of Cuba on Spanish nationals may be served in Spanish penal establishment or under surveillance of Spanish authorities

2. Penalties or security measures imposed in Spanish territory on nationals of the Republic of Cuba may be served in Cuban penal establishments or under surveillance of Cuban authorities.

(...)

Article 5.

The present Convention shall be applicable only under the following conditions:

1. The actions or omissions which have given rise to the criminal judgement are also punishable or sanctionable in the State in which the sentence is served, even if they are not identical statutory offences.

2. The offence is not political or strictly military in nature.

3. The convicted or penalized person is a national of the State where the sentence is served.

4. The judgement is final, without prejudice to Article 14.

5. The convicted person or, if incapacitated, his legal representative, consents to the transfer.

6. The duration of the sentence that remains to be served at the time the

³ This Convention entered into force on 16 June 2000 (*BOE* 240, 6.10.2000).

request referred to in subparagraph 2 c) of Article 10 is submitted is at least six months. In special cases the Parties may agree to allow a request even though the period that remains to be served is shorter.

(...)

Article 17.

No judgement shall be enforced by the State in which the sentence is served extending the punishment or security measure consisting of deprivation of liberty longer than the term imposed by the sentence in the convicting state".

– Agreement between Spain and Cuba on cooperation in prevention of the consumption of, and in the fight against trafficking in, narcotic drugs and psychotropic substances, done at Havana on 10 November 1998 (*BOE* 312, 30.12.98 and 240, 6.10.00 [s.e].

Provisional application: 10 November 1998.

XXII. TAX LAW

– Convention and Protocol between Spain and Thailand to prevent double taxation and the evasion of, and fraud in, income tax, done at Madrid on 14 October 1997 (*BOE* 242, 9.10.98).

Ratified by Instrument: 17 July 1998.

Entry into force: 16 September 1998.

Note: "Article 1. *Personal scope*

The present Convention is applicable to persons residing in one of both of the Contracting States.

Article 2. *Taxes included*

1. The present Convention is applicable to personal income tax leviable by each of the contracting States, its political subdivisions or local corporations, irrespective of the system whereby they are levied.

2. Income and taxes are considered to be those which are levied on the total income or on any part thereof, including taxes on gains arising from the disposal of movable or immovable property, taxes on wages or salaries paid by undertakings, and capital gains taxes

Article 28. *Entry into force*

1. (...)

2. The Convention shall enter into force following the exchange of the instruments of ratification and its provisions shall be applicable:

a) In respect of taxes deductible at source, to income paid or earned as from 1 January of the year following the exchange of instruments of ratification.

b) In respect of other income, from the chargeable period or accounting year as from 1 January of the year following the exchange of the instruments of ratification.

– Convention and Protocol between Spain and Bolivia to avoid double taxation

and prevent the evasion of income and capital taxes, done at La Paz on 30 June 1997 (*BOE* 295, 10.12.98).

Ratified by Instrument: 18 September 1998.

Entry into force: 23 November 1998.

Note: Unlike the previous Convention, it not only includes income and corporation tax but also capital tax (Article 2.3). Both Conventions establish the same criteria of connection for tax purposes and follow the same model for the imputation of taxes in order to avoid double taxation.