

Treaties to which Spain is a Party Concerning matters of Private International Law, 1997

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This survey covers the treaties and other international agreements published in the *Boletín Oficial del Estado* (Official State Journal) during 1997. 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 other treaties or agreements.

I. SOURCES OF PRIVATE INTERNATIONAL LAW

III. PROCEDURE AND JUDICIAL ASSISTANCE.

– Agreement between Spain and France, done at Brussels on 29 November 1996, applying the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters, done at Brussels on 26 May 1997 (*BOE* 51, 28.2.97).

Entry into force: 1 January 1997.

Note: “First.– Pursuant to article 10 b) of the Hague Convention of 15 November 1995:

Documents shall be transmitted directly: In Spain, by the *Secretarios Judiciales* of the *Juzgados de Primera Instancia*. In France, by the *Procureur Général* of the *Cour de Cassation*, the *Procureurs Générales* of the *Cour d’Appel* and the *Procureurs de la République* of the courts of *Grande Instance*.

In Spain, documents shall be received and served by the *Secretarios Judiciales* of the *Juzgados de Primera Instancia*. In France, by the *Procureurs de la République* of the courts of *Grande Instance*.

(...)

Third.– The request for service and certificate of service shall be issued in accordance with the forms annexed hereto”.

– Convention between Spain and Morocco on legal aid, recognition and enforcement of decisions relating to rights of custody and right of access and return of minors, done at Madrid on 30 May 1997 (*BOE* 150, 24.6.97).

Provisional application: as from 30 May 1997.

Note: “Chapter I. *General Provisions*

Article 1.

1. The purpose of the present Convention is

a) To secure the return of minors who are wrongfully removed or retained to one of the Contracting States

b) To ensure that judicial decisions relating to custody and right of access issued in one of the Contracting States are recognised and enforced in the territory of the other State

c) To foster the free exercise of right of access in the territory of both States.

2. (...).

Article 2.

The Convention shall apply to any non-emancipated minor aged under sixteen having the nationality of one of the States party.

Article 3.

1. The Ministries of Justice of both States are designated as Central Authorities responsible for meeting the obligations laid down in the present Convention ...

(...)

3. The present Convention shall not preclude the power of any person who so wishes to approach the judicial authorities of the Contracting States directly, at any stage in proceedings”.

– Convention between Spain and Morocco on judicial cooperation in civil, commercial and administrative matters, done at Madrid on 30 May 1997 (*BOE* 151, 25.6.97).

Provisional application: as from 30 May 1997.

Note: “Title I. General Provisions

Article 1. *On access to courts and tribunals*

The nationals of each of the two States shall enjoy free and easy access to the courts of law and administrative tribunals in the territory of the other State, to act in defence of their rights.

Article 2. *Cautio Iudicatum Solvi*

The nationals of either Parties who appear as plaintiffs or parties before the judicial authorities of the other Party in civil, commercial or administrative matters shall be exempted from furnishing bond or a deposit of any kind, however called, even in the event that they are not domiciled, or do not reside habitually, in the territory of either of the Parties.

Article 3. *Legal persons*

The provisions of the present Convention on nationals of one of the Parties shall be applicable, subject to the provisions on *ordre public* of the State in which the action is brought, to legal persons which have been incorporated in accordance with the legislation of one of the Parties and have their registered office in the territory of the other Party.

(...)

Title 11. *Legal aid for court proceedings in civil, commercial and administrative matters*

Article 6. Judicial and extrajudicial documents. Rogatory commissions

1. Judicial and extrajudicial documents relating to civil, commercial and administrative matters, and rogatory commissions, from one of the Parties, shall be sent either directly by the Central Authority of the requesting Party to the Central Authority of the requested Party, or through diplomatic channels.

(...)

– Convention between Spain and the Union of Soviet Socialist Republics on judicial assistance in civil matters, done at Madrid on 26 October 1990 (*BOE* 151, 25.6.97).

Ratified by Instrument: 22 November 1996.

Entry into force: 22 July 1997.

Note: “Chapter I. *General Provisions*

Article 1. Legal protection

1. The nationals of a Contracting Party shall enjoy the same legal protection, both personal and of their property, in the territory of the other Contracting Party as the nationals of the other Contracting Party.

2. The nationals of a Contracting Party shall have free access to the Courts and Tribunals and to other bodies of the other Contracting Party that are competent in matters relating to civil law, including family and commercial matters, in the same conditions as the nationals of that Party.

(...)

4. The provisions of this Convention shall equally apply to legal persons which have been incorporated in the territory of one of the Contracting Parties pursuant to the laws in force in that territory.

(...)

Article 2.

The nationals of a Contracting Party who appear before the Courts and Tribunals of the other Contracting Party shall not be obliged to furnish bonds, a deposit or any other guarantee solely because they are aliens or because they are not domiciled, or do not reside, in that State.

Article 3.

The nationals of a Contracting Party shall receive free legal aid in the other Contracting Party in the same conditions as the nationals of the latter.

(...)

Chapter II. Legal aid in civil matters

Article 5. Scope of legal aid

Legal aid in civil matters comprises the service of documents, the provision of information on the law in force and legal practice, as well as the fulfilment of rogatory commissions as provided in the legislation of the requested Contracting Party, in particular, questioning of the Parties to the proceedings, and of witnesses and experts, judicial examination of evidence and the giving of real evidence.

Subject to request and in the cases and procedures established in their own

legislation, the central government bodies of the Contracting Parties shall provide assistance in locating in their respective territories the domicile of persons sued by persons residing in the territory of the other Party”.

IV. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND DECISIONS

– Convention between Spain and Morocco on legal aid, recognition and enforcement of judgments relating to rights of custody and right of access and return of minors, done at Madrid on 30 May 1997.

(*See supra* III.)

– Convention between Spain and Morocco on judicial cooperation in civil, commercial and administrative matters, done at Madrid on 30 May 1997.

(*See supra* III.)

Note: “Title III. *On recognition and enforcement of judgments, arbitration awards and authenticated documents.*

Article 22.

1. Judgments in civil, commercial and administrative matters, including those which award compensation for damages and prejudicial consequences for civil liability to the victims of criminal offences, issued by the courts or tribunals of either of the two Contracting States, shall have the authority of *res judicata* and be enforceable in the other State, in the conditions and forms established by the present Title.

2. The present Convention shall not be applicable to judgments dictated in the following matters and cases:

- a) In matters of testaments and succession;
- b) In matters of bankruptcy, winding-up proceedings of enterprises or other insolvent legal persons, and similar covenants and agreements between debtors and creditors;
- c) Settlements of disputes in social security matters as laid down in the Convention between Spain and Morocco on social security of 8 November 1979;
- d) In the case of cautionary and provisional measures, except for those dictated in maintenance obligations”.

– Convention between Spain and the Union of Soviet Socialist Republics on legal aid for court proceedings in civil matters, done at Madrid on 26 October 1990.

(*See supra* III.)

Note: “Chapter IV. *Recognition and enforcement of judgments and decisions*

Article 17.

1. The judgments and decisions issued by the courts and tribunals of one of the Contracting Parties as established in paragraph 2 of article 1 shall be recognised and, if the nature of the judgment or decision so requires, shall be

enforced in the territory of the other Contracting Party in the conditions established in this Convention

2. The court decisions mentioned in paragraph 1 shall be:

- 1) Decisions in civil and commercial matters
- 2) Judicial transactions
- 3) Criminal judgments in matters relating to compensation for damages caused by the offence

3. The provisions of the present Chapter shall not apply in the case of:

- 1) Decisions on bankruptcy and similar proceedings
- 2) Decisions on Social Security matters
- 3) Decisions on matters of compensation for damages caused by nuclear energy
- 4) Arbitral awards".

V. INTERNATIONAL COMMERCIAL ARBITRATION

VI. CHOICE OF LAW: SOME GENERAL PROBLEMS

VII. ALIENS, REFUGEES AND CITIZENS OF EUROPEAN COMMUNITY

– Exchange of Letters between Spain and Bulgaria for the abolition of visa requirements for holders of diplomatic passports, done at Sofia on 16 December 1996 (*BOE* 51, 28.2.97 and 231, 26.9.97).

Provisional application: as from 26 December 1996

Entry into force: 31 August 1997

Note: "The nationals of each of the Contracting Parties who hold valid diplomatic passports may enter and remain in the territory of the other Contracting Party for a period of up to ninety days without visa".

– Agreement between Spain and Bulgaria on the readmission of persons not in a lawful position, done at Sofia on 16 December 1996 (*BOE* 51, 28.2.97 and 231, 26.9.97).

Provisional application: as from 15 January 1997.

Entry into force: 3 September 1997.

Note: "I. *Readmission of nationals of the Contracting Parties*

Article 1.

1. Each Contracting Party shall readmit into its territory, at the request of the other Contracting Party, and without formalities, any person who does not meet or no longer meets the entry or visitors' requirements applicable in the territory of the requesting Contracting Party, provided that the person is proven or presumed to be a national of the requested Contracting Party.

2. The requesting Contracting Party shall readmit a person who is expelled from its territory pursuant to section 1, and at the request of the other Contracting Party and without formalities, if, as a result of subsequent evidence, he is found not to possess the nationality of the requested Contracting Party at the time of leaving the territory of the requesting Contracting Party.

(...)

II. *Transit for the purpose of expulsion*

Article 5.

1. Each of the Contracting Parties, at the request of the other, shall authorise the entry and transit of their territory by air of nationals of third States whom the requesting Contracting Party expels from its territory.

2. The requesting Contracting Party shall take full responsibility for the continuance of the journey of the alien to his country of destination and shall again take responsibility if, for any reason, it were not possible to effect the expulsion, removing the person from the territory of the requested Contracting Party.

(...)

III. *Final provisions*

(...)

Article 11.

1. The provisions of the present Agreement shall not affect the obligations relating to the admission or readmission of aliens by which the Contracting Parties are bound through other international Agreements.

2. The provisions of the present Agreement shall not preclude the application of the provisions of the Geneva Convention of 28 July 1951 on the Status of Refugees as amended by the New York Protocol of 31 January 1967.

3. The provisions of the present Agreement shall not preclude the application of the provisions of the Agreements signed by the Parties in the sphere of human rights protection”.

– Exchange of Letters between Spain and Tunisia for the abolishment of visa requirements for holders of diplomatic passports, done at Madrid on 27 December 1996 (*BOE* 60, 11.3.97 and 231, 26.9.97).

Provisional application: as from 27 December 1996.

Entry into force: 28 July 1997.

Note: “Citizens of both countries who hold valid diplomatic passports shall be exempted from requiring a visa to enter the territory of the other Party for stays of no longer than three months per six months from the date of the first entry”.

– United Nations Convention relating to the Status of Stateless Persons, done at New York on 28 September 1954 (*BOE* 159, 4.7.97).

Accession by instrument: 12 May 1997.

Entry into force: 10 August 1997.

Note: The Government of the Kingdom of Spain “makes a reservation to article

29, paragraph 1, and considers itself bound by the provisions of that paragraph only in the case of stateless persons residing in the territory of any of the Contracting States”.

– Protocol concerning the consequences of the entry into force of the Dublin Convention on certain provisions of the Convention implementing the Schengen Agreement, done at Bonn on 26 April 1994 (*BOE* 163, 9.7.97).

Ratified by instrument: 24 November 1995.

Entry into force: for Spain, Germany, Belgium, France, Luxembourg, the Netherlands and Portugal on 1 August 1997.

– Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, done at Dublin on 16 June 1990 (*BOE* 183, 1.8.97 and 235, 1.10.97).

Ratified by Instrument: 10 April 1995.

Entry into force: 1 September 1997.

Note: “The Kingdom of Spain declares that if, in accordance with Article 19 of the Convention, the United Kingdom decides to extend its application to Gibraltar, the said application shall not be held to be prejudicial to Spain’s position with respect to the dispute in which it is engaged with the United Kingdom over the sovereignty of the isthmus”.

– Exchange of Letters between Spain and Morocco on the abolishment of visa requirements for diplomatic passports, done at Madrid on 15 and 16 July 1997 (*BOE* 231, 26.9.97).

Provisional application: from 16 July 1997.

Note: (same as the Exchange of Letters with Tunisia. See *supra*)

– Protocol of accession by Spain, signed at Bonn on 25 June 1993, to the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and French Republic, on the gradual abolition of checks at their common borders, signed at Schengen on 14 June 1985, as amended by the accession Protocol of the Italian Republic, signed at Paris on 27 November 1990 (*BOE* 62, 13.3.97).

Ratified by Instrument: 23 July 1993.

Entry into force: 1 May 1995.

– Protocol of accession of the Hellenic Republic, signed at Madrid on 6 November 1992, to the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and French Republic, on the gradual abolition of checks at their common borders, signed at Schengen on 14 June 1985 as amended by the accession Protocols of the Italian Republic, signed at Paris on 27 November 1990 and the Kingdom of Spain and the Portuguese Republic, signed at Bonn on 25 June 1991 (*BOE* 296, 11.12.97).

Ratified by Instrument: 28 March 1994.

Entry into force: 1 February 1997.

– Agreement, signed at Madrid on 6 November 1992, on the accession of the Hellenic Republic to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990, to which the Italian Republic acceded by means of an Agreement signed at Paris on 27 November 1990 and the Kingdom of Spain and the Portuguese Republic by means of Agreements signed at Bonn on 25 June 1991 (BOE 296, 11.12.97).

Ratified by Instrument: 28 March 1994.

Entry into force: 1 December 1997

– Protocol of accession of the Austrian Republic, signed at Brussels on 28 April 1995, to the Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and French Republic, on the gradual abolition of checks at their common borders, signed at Schengen on 14 June 1985 as amended by the accession Protocols of the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic, signed respectively on 27 November 1990, 25 June 1991 and 6 November 1992 (BOE 296, 11.12.97).

Ratified by Instrument: 20 May 1997.

Entry into force: 1 December 1997.

– Agreement, signed at Brussels on 28 April 1995, on the accession of the Austrian Republic to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990, to which the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic acceded by means of Agreements signed respectively on 27 November 1990, 25 June 1991 and 6 November 1992 (BOE 296, 11.12.97).

Ratified by Instrument: 20 May 1997.

Entry into force: 1 December 1997.

VIII. NATURAL PERSONS: LEGAL INDIVIDUALITY, CAPACITY AND NAME

IX. FAMILY LAW

X. SUCCESSION

XI. CONTRACTS

XII. TORTS

– Announcement denouncing the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on 29 November 1969, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, done at Brussels on 18 December 1971 (*BOE* 176, 24.7.97).

Denouncement effective: from 15 May 1998

Note: These Conventions came into force for Spain on 7 March 1976 and 6 January 1982, respectively.

XIII. PROPERTY

1. Industrial property

– Regulations implementing the Madrid Agreement concerning the International Registration of Trademarks of 1891, revised at Stockholm in 1967, and the 1989 Protocol concerning this Agreement, adopted by the General Assembly of the Madrid Union on 18 January 1996 (*BOE* 58, 8.3.97).

Entry into force: 1 April 1996

– Review instrument of Article 63 of the European Patent Convention, done at Munich on 17 December 1991 (*BOE* 134, 5.6.97).

Ratified by Instrument: 30 April 1997.

Entry into force: 4 July 1997.

XIV. COMPETITION LAW

XV. INVESTMENTS AND FOREIGN EXCHANGE.

– Agreement between Spain and Paraguay on the mutual protection and promotion of investments, done at Asuncion on 11 October 1993 (*BOE* 8, 9.1.97).

Entry into force: 22 November 1996

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

– Agreement between Spain and Indonesia for the mutual promotion and

protection of investments, done at Jakarta on 30 May 1995 (*BOE* 31, 5.2.97 and 98, 24.4.97).

Entry into force: 18 December 1996

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

– Agreement between Spain and Mexico for the mutual promotion and protection of investments, done at Mexico DF on 23 June 1995 (*BOE* 32, 6.2.97 and 98, 24.4.97).

Entry into force: 18 December 1996.

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

– Agreement between Spain and the Lebanese Republic for the mutual promotion and protection of investments, done at Madrid on 22 February 1996 (*BOE* 122, 22.5.97).

Entry into force: 29 April 1997.

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

– Agreement between Spain and Latvia for the mutual promotion and protection of investments, done at Madrid on 26 October 1995 (*BOE* 134, 5.6.97).

Entry into force: 14 March 1997.

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

– Agreement between Spain and Venezuela for the mutual promotion and protection of investments, done at Caracas on 2 November 1995 (*BOE* 245, 13.10.97).

Entry into force: 10 September 1997.

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

XVI. FOREIGN TRADE LAW

XVII. BUSINESS ASSOCIATION CORPORATION

XVIII. BANKRUPTCY

XIX. TRANSPORT LAW

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

XX. LABOUR LAW AND SOCIAL SECURITY

– Protocol to the Social Security Agreement of 10 November 1986 between Spain and Canada, done at Ottawa on 19 October 1995 (*BOE* 34, 8.2.97).

Entry into force: 1 May 1997.

Note: This Protocol amends or substitutes the following Articles of the Convention between Spain and Canada on Social Security, done at Madrid on 10 November 1986: Article 6 paragraphs 2 and 4; Article 12; Article 13 subparagraphs 1 c) and 1 d); and Article 13 paragraph 2;

“Article 6

1. Upon the entry into force of this Protocol, benefits which have been previously requested or granted under the Agreement may be examined again or revised by the competent institution at the request of the interested Party considering the provisions of this Protocol. The economic effects of the revision shall accrue from the first day of the month following the application by the interested party.

2. Under no circumstances, as a result of the revision carried out pursuant to the provisions of the previous paragraph, may the interested Party receive a benefit of a smaller amount than received thitherto.

Article 7

(...)

3. Should the Agreement be denounced as provided in art. 25 paragraph 2, this Protocol shall also be deemed to be denounced, with the same effects and date of termination of the Agreement”.

– Resolution of the Secretariat of State for Social Security of 21 January 1997 publishing the decision of the competent Spanish and Argentinean authorities on Social Security legislation applicable to workers who render services to joint fishing undertakings formed in the Argentinean Republic and establishing instructions for its application (*BOE* 25, 29.1.97).

Decision effective: from 1 January 1997.

Note: “Pursuant to the provisions of Article 3, section 2, of the Spanish-Argentinean Social Security Convention of 28 May 1966, and as an exception to the rule in section 1, point c) of that Article, the competent authorities of both States agree that Spanish citizens effectively domiciled in Spain who render services to joint fishing undertakings formed in the Argentinean Republic referred to in Royal Decree 798/1995 of 19 May, in vessels flying the Argentinean Republic flag, shall be considered to belong to the Spanish undertaking taking part in the said joint undertakings and, as such, shall be subject to Spanish social security legislation”.

XXI. CRIMINAL LAW

– Extradition treaty between Spain and the Eastern Republic of Uruguay, done at Madrid on 28 February 1996 (*BOE* 93, 18.4.97).

Ratified by Instrument: 7 January 1997.

Entry into force: 19 April 1997.

Note: Chapter I. *General principles*

Article 1. *Obligation to grant extradition*

Each of the Contracting States agrees to extradite to the other, in accordance with the rules and conditions established in this Treaty, any persons who are wanted by the judicial authorities for prosecution or for the enforcement of a punishment consisting of deprivation of liberty.

Article 2. *Extraditable offences*

1. Extraditable offences are offences however described which are punishable under the laws of both Contracting States by deprivation of liberty for a maximum period of at least two years.

2. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence, extradition shall be granted only if a period of at least six months of the penalty remains to be served.

3. When the request for extradition refers to several, different and related offences that are punishable both by the law of the requesting Party and by that of the requested Party, and the requirements established in paragraphs 1 and 2 of this Article regarding one or any of them do not concur with respect to the length of the punishment, the requested Party may also grant extradition with respect to the latter.

Chapter II. *Legitimacy of the extradition*

Article 3. *Jurisdiction, offences against the law of both States and punishment*

In order for the extradition to be legitimate, it is necessary:

A) That the requesting State have jurisdiction to judge the offence on which the application is based, whether or not it has been committed in the territory of the requesting Party; and

B) That when the application for extradition is lodged, the offence on which the application is based fulfil the requirements established in Article 2 of this Treaty

(...)

Chapter III. *Illegitimacy of the extradition*

Article 4. *Political offences*

1. Extradition shall not be granted for offences considered to be political offences by the requested Party or related offences. Merely pleading a political aim or motive for committing an offence does not qualify the offence as such.

(...)

3. The application of this Article shall not restrict the obligations the Parties may have assumed or may assume in bilateral or multilateral Treaties.

Article 5. *Military offences*

(...)

Article 6. *Fraud*

(...)

Article 7. *Autrefois acquis*

(...)

Article 9. *Death penalty or life imprisonment*

(...)

Chapter IV. *Optional refusal of extradition*

Article 10. *Prescription and amnesty*

1. The requesting Party having established that the action or punishment for the offences for which extradition is requested has not prescribed ... the requested Party may refuse extradition if the action or the punishment would have prescribed according to its legislation.

2. The granting of an amnesty by the requested Party shall not prevent the extradition, unless the offence on which the application is based is subject to that Party's jurisdiction.

Article 11. *Place of commission*

1. The extradition may be refused if the offence for which extradition is requested is considered by the requested Party to have been committed in whole or in part within the territorial jurisdiction of that State

2. The requested State may only refuse extradition on the grounds of jurisdiction if it cites its own jurisdiction to try the case

Article 12. *Proceedings in progress for the same offences*

(...)

Article 13. *Extradition of nationals*

1. Extradition for the purpose of trial in the requesting State may not be refused on the grounds that the subject is a national of the requested State.

2. The Party in whose territory a punishment of imprisonment has been imposed by means of a judgment with the force of *res judicata* against a national of the other who, on fleeing to his own country, has avoided the enforcement of the punishment, may request the other Party to continue with the enforcement if the person who has evaded justice is in its territory.

(...)

Chapter VIII. *Final provisions*

(...)

Article 27. *Entry into force and termination*

(...)

2. When this Treaty enters into force, the Treaty on the Extradition of Criminals between the Kingdom of Spain and the Eastern Republic of Uruguay, signed at Montevideo on 23 November 1885, shall terminate, without prejudice to the provisions of paragraph 4 of this Article.

3. Requests for extradition made after the entry into force of this Treaty shall be governed by its clauses, irrespective of the date on which the offence was committed.

4. Requests for extradition made prior to the entry into force of this Treaty shall continue to be processed pursuant to the provisions of the 23 November 1885 Treaty”.

– Convention between Spain and Ecuador for the serving of convictions, done at Quito on 25 August 1995 (*BOE* 72, 25.3.97).

Ratified by Instrument: 7 January 1997.

Entry into force: 10 March 1997.

Note: “Article II. *General principles*

Pursuant to the provisions of the present Convention:

a) Prison sentences or safety measures consisting of deprivation of liberty imposed in one of the Contracting States on nationals of the other may be served by the convicted person in the State of which he is a national and;

b) The Contracting States undertake to co-operate with each other to the utmost with respect to the transfer of convicted persons.

Article III. Conditions for the application of the Convention

The present Convention shall be applied solely under the following conditions:

1. There is a final and executable judgment . . .

2. The convicted person expressly agrees to the transfer, having previously been informed of the legal consequences thereof .

3. The offence for which the person has been convicted also constitutes an offence in the recipient State . . .

4. The convicted person is a national of the recipient State.

5. A period of at least one year of the penalty remains to be served at the time the application is lodged.

6. Enforcement of the punishment is not contrary to the internal rules of the recipient State.

7. The remaining provisions of the judgment other than deprivation of liberty, and including those on civil liability, have been fulfilled, unless the convicted person has been declared bankrupt.

(...)

Article IX. Application of the Convention in special cases

The present Convention may also be applied to persons subject to surveillance or other measures, pursuant to the laws of one of the Parties relating to under-age offenders. Consent for transfer must be obtained from whoever is legally empowered to give it.

The present Convention may be applied to persons whom the competent Authority has declared incompetent. The Parties shall agree, pursuant to their internal law, on the type of treatment to give to the persons transferred. Consent for transfer must be obtained from whoever is legally empowered to give it.

Article X. Central authority

Before the Convention enters into force, the Parties shall notify each other through diplomatic channels of the designation of their respective central authorities responsible for its application”.

– Convention between Spain and Nicaragua for the serving of prison sentences, done at Managua on 18 February 1995 (*BOE* 140, 12.6.97).

Ratified by Instrument: 9 September 1996.

Entry into force: 15 May 1997.

Note: The content is the same as that of the Convention between Spain and Ecuador cited previously.

– Convention between Spain and Morocco on assistance to detainees and the transfer of convicted persons, done at Madrid on 30 May 1997 (*BOE* 145, 18.6.97).

Provisional application: from 30 May 1997.

Note: The Convention provides for assistance by Consuls to their nationals detained in the territory of the other State (Title I) and the transfer of convicted persons in order that they may serve their prison sentences in the State of which they are nationals (Title II).

– Convention between Spain and Morocco on judicial assistance in criminal matters, done at Madrid on 30 May 1997 (*BOE* 150, 24.6.97).

Provisional application: from 30 May 1997

Note: “Article 1.

1. The Contracting Parties undertake to grant each other, in accordance with the rules and under the conditions laid down by the following articles, judicial assistance in all criminal matters

2. The present Convention shall not be applicable to the fulfilment of decisions on arrest or conviction.

Article 2. Exceptions

Judicial assistance may be refused when:

a) The request relates to offences that the requested State considers to be political or related offences or those consisting solely of the breach of military obligations

b) The requested State considers that granting the request may damage its sovereignty, security or public policy”.

– Convention on extradition between Spain and Morocco, done at Madrid on 30 May 1977

Provisional application: from 30 May 1997 (*BOE* 151, 25.6.97).

Note: “Title I. *Obligation to grant extradition*

Article 1.

Each of the Contracting Parties undertakes to extradite to the other, pursuant to the rules and under the conditions established in the present Convention, persons found in the territory of one of the States who are prosecuted or convicted by the judicial authorities of the other State.

Title II. Extraditable offences

Article 2.

Extradition shall be granted in the following circumstances:

1. When the person whose extradition is requested is prosecuted for offences punishable under the laws of both Contracting States by a penalty consisting of deprivation of liberty for a minimum period of two years.

2. When the person whose extradition is requested is convicted by default for offences punishable under the laws of the requested State by the courts of the requesting State to a minimum of six months' deprivation of liberty.

If the request is based on a default judgment, extradition shall only be granted if the requesting Party undertakes to bring up for trial by default the person whose extradition is requested.

Title III. *Reasons for compulsory refusal of extradition*

Article 3. *Non-extradition of nationals*

The Contracting Parties shall not grant extradition to their respective nationals.

Nationality shall be determined as at the time of the decision concerning extradition.

Nonetheless, the requested Party undertakes to take proceedings insofar as it has jurisdiction to judge them, against its own nationals who have committed in the other State offences punishable as crimes in both the States, when the other Party transmits to it through diplomatic channels a request for service of proceedings accompanied by the records, documents, objects and information in its possession. The requesting Party shall be informed of the result of its request.

Article 4. *Political offences*

Extradition shall not be granted if the offence for which it is requested is considered by the requested Party to be a political or related offence.

(...)

Article 6. *Place of commission*

Extradition shall be refused if the offence for which it is requested has been committed in the requested State.

Article 7. *Other reasons for refusal*

Extradition shall be refused

a) Where final judgment has been passed in the requested State.

b) When, where the offence for which extradition is requested has been committed outside the territory of the requesting State by a non-national of that State, the laws of the requested country do not authorise the prosecution of offences of the same kind committed outside its territory by a foreign national.

c) Where an amnesty or pardon has been granted in the requesting State or an amnesty or pardon is granted in the requested State, provided that, in the latter case, the offence may be prosecuted in this State although it has been committed outside the territory of this State by a non-national thereof.

Title IV. *Extradition may be refused in any of the following circumstances.*

Article 8. *Military offences*

(...)

Article 9. *Lis pendens*

Extradition may be refused when the prosecution in respect of the offence for which extradition is requested is pending in the requested State or when the person whose extradition is requested has been tried in a third State.

Article 10. *Fiscal offences*

(...)

Article 11. *Death penalty*

(...)"

– Treaty between Spain and Panama on the transfer of convicted persons, done at Madrid on 20 March 1996 (BOE 153, 27.6.97).

Ratified by Instrument: 19 December 1996.

Entry into force: 29 June 1997.

Note: "Article 2. *General principles*

1. Sentences or security measures imposed in Spain on nationals of the Republic of Panama may be executed in penal establishments of the Republic of Panama or under the supervision of its authorities.

2. Sentences or security measures imposed in the Republic of Panama on Spanish nationals may be executed in penal establishments of Spain or under the supervision of its authorities.

3. Request for transfer may be made from the State that has passed the sentence or by the State where it is served.

4. The State that has passed the sentence and the State where it is served must agree on the transfer.

(...)

Article 4. *Transfer requirements*

The present Treaty shall be applied in accordance with the following requirements:

1. The offences or omissions for which the person has been convicted must also be punishable in the State where the sentence is served ...

2. The convicted person must be a national of the State where the sentence is served at the time of request for transfer.

3. The judgment must be final.

4. The convicted person, or, if incapacitated, his legal representative, must agree to the transfer.

5. The period of the penalty or security measure remaining to be served at the time the request is made ... must be at least one year. In exceptional cases, the Parties may agree to allow a request even though the period that remains to be served of the penalty or security measure is shorter.

(...)

Article 17. *Central Authorities*

1. Each State hereby designates a Central Authority which will be responsible for exercising the functions established in the present Treaty.

2. The Kingdom of Spain designates as Central Authority the Ministry of Justice and the Interior (Directorate General for Codification and International

Legal Cooperation). The Republic of Panama designates as Central Authority the Ministry for Foreign Relations.

3. The Parties shall communicate any changes of their Central Authorities through diplomatic channels.

Article 18. *Application*

The present Treaty shall be applicable to the serving of sentences imposed by final judgments passed before its entry into force”.

– Treaty on extradition between Spain and Ecuador, done at Madrid on 28 June 1989 (BOE 313, 31.12.97).

Ratified by Instrument: 12 November 1997.

Entry into force: 31 January 1998

Note: “Article 1. *Obligation to extradite*

Each of the High Contracting Parties agrees to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for prosecution or the imposition or enforcement of a sentence for an extraditable offence.

Article 2. *Extraditable offences*

1. For the purpose of this Treaty, extraditable offences are those which ... are punishable under the laws of both Contracting States by imprisonment for a minimum period of one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of the penalty remains to be served.

(...)

5. Extradition shall be granted when the offence for which extradition is requested has been committed in the territory of the requesting State or, when it has been committed outside this territory, the requested State has jurisdiction to try this offence.

6. Offences included in multilateral Conventions to which both countries are party shall also be extraditable.

Article 3. *Exceptions to extradition*

1. ... (Political offences shall not be extraditable with the usual exceptions established in extradition treaties: taking or attempted taking of the life of a Head of State or Government, offences of genocide, terrorism, etc ...).

2. An extradition request may be refused under any of the following circumstances:

a) When the person whose extradition is requested is a national of the requested State and when the requested State refuses to extradite a national of that State ... Nationality shall be determined as at the time of the decision concerning extradition, and provided that nationality has not been acquired for the fraudulent purpose of preventing extradition ...

b) When the courts of law of the requested State have jurisdiction to prosecute the person in respect of the offence for which extradition is requested.

Extradition may, however, be granted if the requested State has decided to refrain from prosecution. If extradition is refused pursuant to the provisions of this paragraph, the requested State shall submit the case to the competent authorities and shall inform the requesting State of the decision adopted by these authorities.

c) ... (Offences which carry the death penalty or life imprisonment under the laws of the requesting State).

d) Where the offence for which extradition is requested carries a penalty of the category laid down in art. 7 of the International Convention on Civil and Political Rights (cruel, inhumane or degrading penalties or treatment).

e) When, in exceptional cases, the requested State, having considered the nature of the offence and the interests of the requesting State, deems that extradition would be totally incompatible with humanitarian considerations.

(...)

Article 21. Temporary provision

This Treaty shall be applied to persons who enter the territory of the requested State any time after its entry into force, or to persons abiding in the territory forty five days after its entry into force, irrespective of when the offence was committed.

Article 22. Abrogative provision

The declaration on the mutual surrender of deserting sailors, signed by Spain and Ecuador at Quito on 29 October 1860, is hereby abrogated".

XXII. TAX LAW

– Convention and Protocol between Spain and France to prevent double taxation and tax fraud in matters of income tax and capital tax, done at Madrid on 10 October 1995 (*BOE* 140, 12.6.97).

Entry into force: 1 July 1997.

Note: "Article 1. *Scope*

The present Convention applies to persons residing in one or both of the Contracting States.

Article 2. Taxes included

1. The present Convention applies to income and capital taxes leviable by each of the Contracting States or by their territorial entities, irrespective of the system whereby they are levied.

2. Income and capital taxes are considered to be those which are levied on the total income or capital 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 31. Territorial scope

1. The present Convention may be applied, in its current form or with the necessary amendments, to the overseas territories and other territorial entities of

the French Republic which levy taxes of the same nature as those to which the Convention is applied ...

Article 32. *Entry into force*

(...)

2. The provisions of this Convention shall be applied for the first time:

a) In respect of taxes deductible at source, to income for which payment may be required prior to the entry into force of this Convention.

b) In respect of remaining income taxes, to income relating to the calendar year following the entry into force of this Convention or to the tax year that begins that same year.

c) In respect of remaining taxes, to those leviable as from 1 January of the year following the entry into force of this Convention.

3. The provisions of the Convention between the French Republic and the Spanish State, signed in Madrid on 27 June 1873 to prevent double taxation in matters of income and capital taxes shall cease to be effective when the provisions relating to the present Convention take effect. The provisions, except those of Articles 8 to 28, of the Convention signed in Madrid on 8 January 1963 between France and Spain to prevent double taxation and establish rules of mutual administrative assistance in matters of income tax and inheritance tax, shall continue to be in force”.