

No. 16021

**SPAIN
and
ITALY**

Convention concerning judicial assistance in criminal matters and extradition. Signed at Madrid on 22 May 1973

Authentic texts: Spanish and Italian.

Registered by Spain on 25 November 1977.

**ESPAGNE
et
ITALIE**

Convention d'entraide judiciaire en matière pénale et d'extradition. Signée à Madrid le 22 mai 1973

Textes authentiques : espagnol et italien.

Enregistrée par l'Espagne le 25 novembre 1977.

[TRANSLATION — TRADUCTION]

CONVENTION¹ CONCERNING JUDICIAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN SPAIN AND ITALY

The Head of the Spanish State and the President of the Italian Republic, desiring to regulate relations between the two States and to provide each other with the maximum judicial assistance in criminal matters and in matters relating to extradition,

Have decided to conclude a Convention and, for that purpose, have appointed as their plenipotentiaries:

The Head of the Spanish State: His Excellency Gregorio López Bravo, Minister for Foreign Affairs;

The President of the Italian Republic: His Excellency Ettore Staderini, Ambassador Extraordinary and Plenipotentiary,

who, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I. JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

Article 1. 1. The Contracting Parties undertake to provide each other with the broadest possible judicial assistance, in accordance with the provisions of this Convention, in all criminal proceedings relating to acts of which control comes within the jurisdiction of the judicial authorities of the requesting Party at the time when the assistance is requested.

2. This Convention shall not apply to provisional detention measures or to military offences, except where they constitute breaches of ordinary law.

3. Assistance shall be provided even in the case of acts not punishable under the law of the requested Party. Nevertheless, assistance may be requested for the judicial seizure of objects and the searching of premises and persons only in the case of acts which are also considered offences under the legislation of the requested Party.

Article 2. Judicial assistance may be refused:

- (a) if, in the opinion of the requested Party, the request relates to political crimes, to offences connected with crimes of this kind or to fiscal offences;
- (b) if the requested Party considers that compliance with the request would jeopardize its sovereignty or security, or the maintenance of law and order or any other fundamental national interest.

Article 3. A request for assistance shall be in accordance with the legislation of the requested Party and be confined strictly to the formalities specifically requested, provided that the individual guarantees provided for in the legislation of the requested Party are not impaired and that its principles of law and order are not violated.

¹ Came into force on 1 December 1977, i.e., the first day of the second month following the date of the exchange of the instruments of ratification, which took place at Rome on 11 October 1977, in accordance with article 49.

Article 4. 1. The requested Party shall execute letters rogatory relating to criminal proceedings addressed to it by the judicial authorities of the requesting Party and issued for the purpose of procedural action or communications.

2. If the letters rogatory are issued for the purpose of obtaining procedural judicial orders, pieces of evidence or any kind of documents in general, the requested Party may simply transmit certified copies or photocopies, unless the requesting Party specifically requests the originals.

3. The requested Party may refuse to send articles, procedural judicial orders or original documents requested if it needs them for criminal proceedings that have already been instituted.

4. Articles or documents which have been transmitted in execution of letters rogatory shall be returned as soon as possible, unless the requested Party waives that requirement.

Article 5. At its express request, the requesting Party shall be informed of the date and place of execution of the letters rogatory so that interested authorities or persons may be present at the time of execution.

Article 6. 1. The requested Party shall proceed to serve the documents relating to judicial proceedings or decisions sent to it for that purpose by the requesting Party.

Service may be effected simply by delivery of the document to the person named therein; or, if the requesting Party so requests, in any manner prescribed by the legislation of the requested Party, or in a special manner compatible with the provisions of article 3 of this Convention.

2. Service of documents shall be confirmed by a receipt dated and signed by the person named, or by a certificate from the competent authority stating that service was effected and indicating the manner and date thereof. One or other of these documents shall be transmitted immediately to the requesting Party, and if service cannot be effected the reasons therefor shall be given.

3. Requests for the summoning of a person charged with an offence, a witness or an expert to appear before the authorities of the requested Party need not be acted on if they are received less than 30 days before the date set for the appearance. The requesting Party must take that time-limit into account when formulating its request.

Article 7. If the requesting Party wishes a person who is in the territory of the other Party to appear as a witness or expert, the last-mentioned Party shall serve the summons as requested, but any warning clauses or penalties prescribed in the case of failure to appear shall not be given effect.

Article 8. Travel and subsistence allowances and expenses which the requesting Party is required to pay for the witness or expert shall be calculated from his place of residence, taking as a minimum standard the scales and regulations in force in the territory in which the hearing is to take place.

Article 9. 1. If the requesting Party deems it particularly necessary for a witness or expert to appear in person before its judicial authorities, it shall mention the fact in the request for a summons.

The requested Party shall urge the witness or expert to comply with the request made to him and shall inform the requesting Party of his reply.

2. In the cases provided for in the first paragraph of this article, the request or summons shall mention the approximate amount of the allowances and expenses to be paid and reimbursed. At the request of the person summoned, he may be paid all or part of his expenses in advance by the requested Party on behalf of the requesting Party, through the authorities of his place of residence.

Article 10. 1. If, in a criminal matter, one of the two States deems it necessary for a person held in custody in the other State to appear before its judicial authorities as a witness or for purposes of confrontation, it shall make a request to that effect.

The request shall be complied with, unless special reasons exist for not doing so, on the understanding that the person in custody is to be returned as soon as possible and with due regard for the provisions of paragraph 2 of this article.

2. No person of whatsoever nationality who, in response to a summons, appears before the judicial authorities of the requesting State as a witness or expert may be prosecuted or detained in that State by reason of an act committed or a conviction pronounced prior to his departure from the territory of the requested State.

3. The immunity provided for in the foregoing paragraph shall cease if the witness or expert, having had the opportunity to leave the territory of the requesting State during an uninterrupted period of 30 days after the date on which his presence ceases to be required by the judicial authorities, nevertheless fails to leave that territory or, having left it, returns thereto.

Article 11. The Contracting Parties shall report to each other all convictions pronounced by the judicial authorities of either of them against nationals of the other which are required to be entered in the judicial records in their respective territories.

The reports shall be transmitted through the Ministries of Justice of the two States.

Article 12. The Contracting Parties shall also transmit to each other extracts from the judicial records, in accordance with the law of the requested State and through their Ministries of Justice, at the express request of one Party. The reasons for such a request shall be specified.

In urgent cases, requests for extracts from the judicial records may be made using the services of the International Criminal Police Organization (Interpol).

Article 13. 1. Requests for assistance shall contain the following particulars:

- (a) the name of the authority which issued the document or rendered the decision;
- (b) the nature of the document or decision;
- (c) the legal classification of the offence;
- (d) wherever possible, the identity and nationality of the accused or convicted person;
- (e) the name and address of the intended recipient of the document or notification.

2. Letters rogatory issued for a purpose other than the mere service of documents or legal papers shall also specify the charges and contain a brief statement of the facts.

Article 14. Letters rogatory in criminal matters shall be transmitted directly by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State.

In urgent cases, letters rogatory may be transmitted directly from one competent judicial authority to the other, utilizing, where necessary, the services of the International Criminal Police Organization (Interpol), the requesting authority being required to transmit a copy thereof through the channel specified in the foregoing paragraph.

If the requested authority lacks competence in the matter, it shall of its own motion transmit the letters rogatory to the competent authority.

The provisions of this Convention regarding direct communication between the Ministries of Justice of the two Parties shall not preclude the possibility of utilizing the traditional diplomatic channel where appropriate.

Article 15. Letters rogatory shall be transmitted with an accompanying certified translation in the language of the requested Party. When they are issued simply for the purpose of delivery of judicial documents or decisions and a summons to appear before the authorities of the requesting Party, the translations need not be literal and in such cases a summary indicating the particulars provided for in article 13 may be sent instead, and a standard form for the purpose may be established by agreement between the two Parties.

Article 16. Documents transmitted in compliance with this Convention shall not require legalization.

Article 17. Without prejudice to the provisions of articles 8 and 9 of this Convention, no refund of expenses shall be made in connexion with compliance with requests for assistance, except for expenses incurred for the services of experts or of officers of justice authorized to receive payment for such services, where specifically requested by the requesting Party, or expenses incurred for the transfer, in accordance with the provisions of article 10 of this Convention, of persons held in custody.

TITLE II. EXTRADITION

Article 18. The Contracting Parties undertake reciprocally to extradite, under the terms and conditions specified in the following articles, persons against whom criminal proceedings have been instituted for the commission of an offence, or who are required to serve a sentence or a security measure involving deprivation of liberty imposed, as the result of an offence, by the judicial authorities of one of the Parties.

Article 19. Extradition shall be granted for acts which, under the laws of both Parties, are punishable by a penalty involving deprivation of personal liberty or which warrant a security measure involving deprivation of liberty for a maximum term of more than one year.

Where a sentence has been passed or a security measure involving deprivation of personal liberty has been imposed, extradition shall be warranted only in cases where the penalty carries a term of at least six months.

Article 20. 1. Extradition shall not be granted for offences considered by the requested Party to be of a political nature or connected with offences of that kind.

2. For the purpose of implementing this Convention, an attempt against the life of the Head of State or a member of his family shall not be considered a political offence.

3. Extradition shall likewise not be granted if the requested Party has well-founded reasons for believing that the request for extradition for an offence under ordinary law has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that the person's position may be prejudiced for any of these reasons.

Article 21. 1. The provisions of this Convention shall apply to acts of air piracy.

2. Such acts shall include any breaches of criminal law involving the use of violence or intimidation on board an aircraft in flights registered in one of the Contracting States, with intent to seize and take control of the aircraft. Such breaches shall not be considered political offences when, because of their gravity, the requested State considers that they are mainly in the nature of offences under ordinary law.

Article 22. Extradition for offences that are strictly military shall be excluded from the scope of this Convention.

Article 23. Violations of fiscal, currency and customs regulations shall also be excluded from the scope of this Convention, except by special agreement to the contrary.

Article 24. When requesting the extradition of persons under eighteen years of age who normally reside in the requested State, the judicial authority of the requesting State shall, after consulting the authorities of the requested State, consider the advisability of dropping the request if it is likely to interfere with the normal development of the minor or with his adjustment to society. Where necessary or advisable, the judicial or social welfare authorities shall reach agreement on appropriate measures to be taken in lieu of the penalty or security measure ordered.

If the competent authorities of the two Parties fail to reach agreement, extradition may not be refused on such grounds.

Article 25. 1. Both Parties shall be entitled to refuse extradition of their own nationals. Status as a national shall be determined at the time when the decision on extradition is taken.

2. Where the requested Party does not hand over one of its nationals, it shall so notify the competent judicial authorities so that they may initiate appropriate criminal proceedings if warranted under the law of the requested State. To that end, all documents, reports and articles relating to the offence shall be sent free of charge through the channels provided for in article 32 and the requesting Party shall be informed of the outcome of its requests.

Article 26. 1. With the exception of air piracy offences committed in flight, which shall always be considered as occurring in the territory of the country of registration of the aircraft, the requested Party may refuse extradition of persons wanted for offences committed wholly or partly in its territory or in places assimilated thereto.

2. Where the offence giving rise to the request for extradition has been committed outside the territory of the requesting Party, extradition may not be refused

unless that offence is not subject to prosecution under the legislation of the requested Party.

Article 27. 1. Extradition shall not be granted if the person has already been tried by the authorities of the requested Party for the same acts as gave rise to the request.

2. The requested Party may refuse extradition if the person claimed is being prosecuted in its territory for the same acts as those for which extradition is requested.

Article 28. Amnesty granted in the territory of the requested Party shall prevent extradition only when the offence is subject to its jurisdiction.

Article 29. If, under the law of either of the Parties, the period of limitation respecting a criminal act or penalty has expired, extradition shall not be granted.

Article 30. If the offence for which extradition is requested is punishable by the death penalty under the law of the requesting Party, extradition shall be granted only if the requesting Party gives the requested Party sufficient guarantees that the death penalty will not be enforced.

Article 31. The person extradited may not be tried in the territory of the requesting Party by a special and extraordinary court. Extradition shall not be granted for that purpose or for the execution of a penalty or security measure imposed by courts of that kind.

Article 32. The request for extradition shall be transmitted through the diplomatic channel by the Ministries of Justice of the Parties. In particularly urgent cases, however, the request may be transmitted directly through such Ministries, which shall immediately so inform their respective Ministries of Foreign Affairs.

Article 33. The request for extradition shall be accompanied by:

- (a) the original or a certified copy of a final sentence, a warrant for imprisonment or any other decision having the same force under the law of the requesting Party;
- (b) unless they are included in the document mentioned in the foregoing paragraph, a statement and particulars of the acts for which extradition is requested, indicating as precisely as possible the time and place of perpetration and their legal classification;
- (c) a copy of the relevant legal provisions or a statement on the applicable legislation;
- (d) information on the identity and nationality of the person claimed.

Article 34. If the information or documents sent by the requesting Party are insufficient or faulty, the requested Party shall set a time-limit for the completion or rectification of such documentation.

Article 35. 1. A person handed over for extradition shall not be prosecuted, tried or held in custody for the purpose of enforcement of a sentence or a security measure for an act prior to and different from that for which extradition has been granted, except in the following cases:

- (a) where the Party which has handed over the person gives its consent in response to a request submitted to that effect, which shall be accompanied by the documents

provided for in article 33 and by a judicial record containing the statements of the person extradited. Consent shall be given where the offence in respect of which it is requested calls for mandatory extradition under this Convention;

(b) where the extradited person, having had the opportunity to do so, has not left the territory of the Party to which he was handed over within 45 days following his release.

2. The requesting Party may take any measures that are necessary under its legislation to interrupt the period of limitation.

3. Where the legal classification of the act is altered in the course of the proceedings, the person extradited shall be prosecuted or tried only to the extent that the constituent elements of the offence under the new classification would have warranted extradition.

Article 36. Except in the case provided for in article 35 (b), re-extradition to a third State cannot be granted without the consent of the Party which granted the extradition. The latter may require prior transmittal of the documentation provided for in article 33 and the statement of the person claimed.

Article 37. 1. In urgent cases, the competent authorities of the requesting Party may apply for the provisional arrest of the person requested. The authorities of the requested Party shall act on that request in accordance with its legislation.

2. The application for provisional arrest shall contain an indication of the existence of one of the decisions mentioned in article 33 (a) and of intention to submit a formal request for extradition. It shall also specify the offence and the time and place of perpetration, and shall give particulars concerning the identity and nationality of the person claimed.

3. The application for provisional arrest shall be transmitted directly to the competent authorities of the requested Party, by post or telegraph, or through the International Criminal Police Organization (Interpol), or by any other means providing written evidence or acceptable to the requested Party. The requesting authority shall be informed of the outcome of its application.

4. The provisional arrest may be rescinded if, within 20 days, the requested Party has not received the request for extradition and the documents referred to in article 33. In no circumstances may the provisional arrest last more than 40 days.

A provisional release may, however, be granted provided that the requested Party takes whatever steps it deems necessary to prevent the flight of the person claimed.

5. Such release shall not prevent a second arrest and extradition, if the request for extradition is subsequently received.

Article 38. Where the competent authorities of either Party know of the existence of a warrant of arrest or other equivalent order issued by a judicial authority of the other Party in respect of an offence that calls for mandatory extradition under this Convention, they may proceed to effect the provisional arrest of the person claimed, and forthwith so notify the other Party by the most rapid means. The last-mentioned Party must indicate whether or not it intends to apply for the extradition of the arrested person.

A negative reply or a failure to reply within 15 days following the arrest shall lead to the immediate release of the person held in custody.

Article 39. If extradition is requested concurrently by one of the Parties and by other States, either for the same act or for different acts, the requested Party shall take its decision freely, having regard to all the circumstances, and in particular, to the existence of other treaties binding upon the requested Party, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition.

Article 40. 1. The requested Party shall inform the requesting Party, through the diplomatic channel, of its decision concerning the request for extradition.

2. Reasons shall be given for any total or partial refusal to comply.

3. In the case of an affirmative decision, the requesting Party shall be informed of the appointed place and date of surrender of the person claimed, and of the length of time for which he has been detained.

4. Without prejudice to the provisions of the following paragraph, the person claimed may, if he has not been taken over on the appointed date, be released after 15 days have elapsed from that date. The requested Party may refuse extradition in such cases.

5. In the case of *force majeure* preventing the person claimed from being handed over or taken over, the Parties shall so notify each other and set a new date for the extradition by mutual agreement. In such cases the provisions of the foregoing paragraph shall apply.

Article 41. 1. The requested Party may, after taking a decision on the request for extradition, defer surrender of the person claimed so that he may be tried or, if he has already been sentenced, so that he may serve in its territory the sentence imposed for an offence other than that for which extradition has been requested.

2. Instead of deferring surrender, the requested Party may temporarily hand over the person claimed, on such terms as the two Parties establish by mutual agreement.

3. Surrender may likewise be deferred in the case of a serious illness that could endanger the life of the person.

Article 42. 1. If required by the requesting Party, the requested Party shall, to the extent provided for in its legislation, take possession of and hand over all articles:

(a) which may serve as evidence;

(b) which have been acquired as a result of the offence and have been found in the possession of the person claimed at the time of his arrest, or have been discovered subsequently.

2. The articles referred to in the foregoing paragraph shall be handed over even if extradition, having been granted, cannot be enforced because of the death or escape of the person concerned.

3. If the articles in question are liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.

4. In any case, the rights of the requested Party or of a third person in respect of the articles in question shall not be prejudiced and, in the light of such rights, the articles shall be returned to the requested Party without charge as soon as possible after the end of the proceedings.

Article 43. 1. The conveyance in transit through the territory of either Party of a person whose extradition the other Party has requested of a third State shall be authorized under the same conditions as extradition would be under this Convention.

2. The requested Party shall specify the means of conveyance.

3. In the case of conveyance by air, the following provisions shall apply:

- (a) where no stop is scheduled, the requesting Party shall notify the Party over whose territory the flight will pass and shall call attention to the existence of the circumstances provided for in article 33. In the case of an emergency landing, such notification shall have the same effects as the application for provisional arrest provided for in article 37;
- (b) where a stop is scheduled, the requesting Party shall make a normal application for conveyance in transit.

Article 44. In matters not provided for in this Convention, the respective domestic legislation of the Parties shall apply to the procedure for extradition and provisional arrest.

Article 45. Documents shall be drawn up in the language of the requesting Party and shall be accompanied by a translation into the language of the requested Party.

Article 46. 1. Expenses occasioned by extradition in the territory of the requested Party shall be borne by that Party.

2. Expenses occasioned by conveyance in transit of the person claimed in the territory of the Party to which the request for conveyance in transit was made shall be borne by the requesting Party.

TITLE III. GENERAL PROVISIONS

Article 47. This Convention shall apply to the national territory of Spain and Italy.

Article 48. Any difficulty which may arise in the application or interpretation of this Convention shall be settled through the diplomatic channel.

Article 49. This Convention shall be ratified. The exchange of the instruments of ratification shall take place at Rome as soon as possible. The Convention shall enter into force on the first day of the second month following the date of the exchange of instruments of ratification and shall remain in force until either of the Contracting Parties denounces it. It shall cease to have effect six months after the date on which it was denounced.

DONE at Madrid on 22 May 1973 in four copies, two in Spanish and two in Italian, both texts being equally authentic.

For the Spanish Government:

[Signed]

GREGORIO LÓPEZ BRAVO

For the Italian Government:

[Signed]

ETTORE STADERINI
Ambassador of Italy in Spain