

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

SPAIN

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This country report is one of many prepared for the World Factbook of Criminal Justice Systems under Bureau of Justice Statistics grant No. 90-BJ-CX-0002 to the State University of New York at Albany. The project director was Graeme R. Newman, but responsibility for the accuracy of the information contained in each report is that of the individual author. The contents of these reports do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U. S. Department of Justice.

GENERAL OVERVIEW

1. Political System.

Spain has 17 regional governments and a central government. The penal system is the responsibility of the central government except for Catalonia. The central government administers police functions, but Catalonia and the Basque region have local police.

There are three branches of government: executive, legislative, and judiciary. The judiciary is self-governed by the General Council of the Judiciary. The Council is composed of 20 members who are elected by the Legislative Chambers, and a president who is elected by the 20 members of the Council.

2. Legal System.

Spain has a European Continental legal system, requiring that behavior be defined as criminal and that the penal law assign a penalty to that behavior for it to be prosecuted (*nullum crimen sine lege, nulla pena sine lege*). The investigative stage of the penal process is carried out by a judge, and the suspect benefits from a system of procedural guarantees. Hearings are characterized by adversarial procedures, with a public attorney prosecuting on the basis of findings of the investigating judge, although calumny and slander cases are only prosecuted at the request of the presumptively offended person. Hearings are made public. Evidence is produced in the presence of the accused person, who is always assisted by legal

counsel and by a translator if necessary.

3. History of the Criminal Justice System.

The Spanish penal system was developed during the Middle Ages from local adaptations of its original Germanic heritage. In the 18th century, it was subjected to the influence of the rationalist thinkers who asked for the adoption of systematic rules which resulted, during the era of the French Revolution, in requests for the adoption of Penal and Criminal Procedural Codes.

The famous book, *Dei delitti e delle pene* by Beccaria, first appeared in 1764 and was translated into Spanish some ten years later. Although the book was opposed by some conservative authors at the time, it led to an enthusiastic movement culminating in the proposal to adopt a Penal Code.

In 1812, the Spanish patriots who, during the Napoleonic invasion (1808-1813) had taken shelter in Cadiz in the south of Spain, adopted Spain's first political Constitution. This liberal Constitution also included a proposal for the creation of a Penal Code, but the reestablishment of the absolutist King Ferdinand VII on the Spanish throne (1814) prevented the adoption of the Code. In fact, even the progressive 1812 Constitution was repealed. A liberal upheaval in 1820 led to the adoption of the first Spanish Penal Code in 1822. The Code was in force for only one year, after which the monarch resumed absolute rule.

In 1848, in a more moderate political situation, a new Penal Code was adopted, and since then, a Penal Code has always existed and been applied, with some interruptions during times of military rule. A Penal Procedural Code was adopted in 1881 and is still in force as of 1993. A draft of a new Penal Code, whose structure differed greatly from the existing Penal Code, was being studied by the Legislature in 1993.

CRIME

1. Classification of Crimes.

* Legal classification. There is a distinction between serious (*delitos*) and less serious (*faltas*) offenses. Serious offenses are indictable and less serious offenses are nonindictable.

The Penal Code includes as indictable offenses offenses against state security, fakes and falsifications, offenses against the administration of justice, offenses against sanitation and health (including drug offenses), behavior causing risk but not actual damage, offenses by public officers, offenses against individuals (murder, homicide, illegal abortions, bodily harm caused by assault and

battery), sexual offenses, offenses against reputation (libel and slander), offenses against freedom and personal security, property offenses, and offenses committed recklessly and without intent.

Among the less serious, nonindictable offenses, the Penal Code includes violations of the public order, violations against individuals, and minor property offenses, such as theft resulting in deprivation of less than 30.000 pesetas (\$200).

* Age of criminal responsibility. The age of criminal responsibility is 16 years. Youngsters under this age accused of delinquent behavior are handled by the Juvenile Courts. Delinquents between 16 and 18 years old benefit from a mitigation in penalty. (Penal Code, Article 8.2 and 9.3).

* Drug offenses. Growing, processing, trafficking, promoting and facilitating the consumption of toxic, stupeficient or psychotropic drugs, as well as simple possession with the intent to engage in such behavior, is punishable by 2 to 8 years in prison and a maximum fine of 100 million pesetas in fines (\$666,000) if the drug can cause important harm to personal health. In all other cases, the prison sentence can be set between 4 months and 4 years and the fine can be a maximum of 50 million pesetas (\$333,000).

These penalties can be increased for members of any permanent or temporary organization dedicated to the trafficking of drugs. They can be increased for health facility personnel who give drugs to minors or to persons undergoing treatment for drug addiction. And they can be increased when the quantity of drugs involved is significant. Penal Code, Articles 344 and 344 bis).

Individual consumption is not subject to penalty. An average of 3 days drug stock for individual consumption by drug-addicted individuals does not constitute illegal possession as ruled by the Supreme Court.

2. Crime statistics.

As of 1993, Spain had approximately 39 million inhabitants.

* Murder. In 1991, 861 cases of murder and 982 cases of simple homicide were recorded. Attempts are included. However, the fact that 660 cases of murder recorded in Barcelona and 162 recorded in Madrid account for more than 95% of all the recorded murders in Spain in 1991 casts doubt on the accuracy of these statistics. (One must also consider that when the case is decided, many incidents of simple wounds are often deemed to be homicides because a

killing intention exists. A suicide, which is not a punishable crime, can be initially classified as a homicide until the case is investigated and determined to be suicide.) Murder is described in the Penal Code as manslaughter qualified by certain circumstances such as lying in wait, premeditation, unnecessarily increasing the suffering of the victim, and using poison. (Penal Code, Art. 406).

* Forcible Rape. In 1991, there were 1,902 cases of forcible rape reported by the State Secretary for General Security. Attempts are included. (Forcible rapes numbered 1,724 in 1989 and 1,788 in 1990.) Forcible rape is described in the Penal Code as sexual intercourse with another person, either vaginal, anal or oral, using physical force or intimidation. The legal definition of rape includes the same behavior with persons mentally incapable of consent and with consenting minors under 12 years old. (Penal Code, Art. 429).

* Serious property offense. There were 142,880 incidents of serious property crime recorded in 1991. Attempts are included. The Penal Code describes serious property offenses as the deprivation of movable property with purpose of illicit gain using physical force or intimidation. (Report of the State General Attorney, 1992; Penal Code, Art. 500 and 501).

* Serious drug offense. The total number of persons detained for all drug offenses reached 28,581 in 1991. (Of the persons detained in 1991, 13% were non-Spanish, among which were 653 Moroccans, 565 Colombians, and 234 Italians.) The amount of confiscated drugs increased from 1990 to 1991 by 40.72% for cocaine and 49.48% for hashish, and decreased by 16.35% for heroine. (See also Crime, Drug Offenses).

* Crime regions. Incidents of terrorism are found to be committed mostly in the Basque region. Many terrorist acts involve the murder of one or more persons, and are recorded separately from the homicide rate. In 1991, 100 cases of terrorism were resolved by the courts. In 1991, 73% of all serious property crime cases were recorded in the 5 largest cities of Spain.

VICTIMS

1. Groups Most Victimized by Crime.

There was a victim survey administered in 1989, which consisted of interviews of household members in a sample designed to find the proportion of persons who were victims of crime during the

previous 5 years. Of the persons interviewed, 36.2% had their car radio stolen, 7.6% had their car stolen, 23.5% were victims of vandalism, 5.7% were victims of burglary, and 9% were victims of serious property offenses. All 75 of the sexual attack victims in the survey were women. (Ministry of Justice).

2. Victims' Assistance Agencies.

There is an Association for the Assistance of Raped Women that is subsidized by the government. It has branches in several large cities and helps women in cases of rape by providing professional psychological care and shelter if necessary. The association also delivers lectures and short courses geared toward prevention to youngsters, parents, professors and police. There is an Association for the Protection of Beaten Women with similar characteristics as the rape association.

3. Role of Victim in Prosecution and Sentencing.

The principal role of victims in prosecution is to testify and help identify presumed offenders. Victims are considered at sentencing only with regard to the way that the offender must compensate the victim. Victims are entitled to restitution, reparation and compensation. (Penal Code, Art. 101 and 111).

Public attorneys must request civil compensation for the victims of a criminal offense at the same time that they exercise penal actions, unless the victim wants to sue separately in a civil case at a later time. (Penal Procedural Code, Art. 108 and 111). The victim is also entitled to exercise both penal and civil actions in penal proceedings. If victims can demonstrate poverty, they also have the right to have an unpaid legal counsel appointed to them. (Penal Procedural Code, Art. 119).

4. Victims' Rights Legislation. Information not obtained.

POLICE

1. Administration.

Most police in Spain are affiliated with the central government, except for the regional police, called "mossos d'esquadra" in Catalonia and "erchaintza" in the Basque Country. The regional police operate on the principle that it is better to have a police force composed of people belonging to the same region to deal with problems of public order. There are also local police in the cities and more populated towns, which primarily deal with local automobile traffic. Some of the police

perform their duties in ports and frontiers to detect and prevent smuggling of such items as drugs, tobacco, and the smuggling of illegal immigrants, mostly from Africa, into the European Common Market).

2. Resources.

* Expenditures. The 1990 annual expenditures for police were 262,627,447,000 pesetas (\$1,800,000,000).

* Number of Police. In 1992, the number of police in the central government was 132,133. Local police personnel totaled 46,300. Women constitute a small portion of police personnel, although the number is increasing.

The central government has two types of police, the general police and the traditional "Guardia Civil" (civil guard), whose duties primarily include policing rural areas, ports and frontiers, and controlling road traffic.

3. Technology.

* Availability of police automobiles. The police have 9,300 cars available. The "Guardia Civil" also has an unreported number of cars and motor bikes. Most supervision of road traffic is carried out by two-officer patrols on motor bikes.

* Electronic equipment. Most police cars have telephones which allow them to instantly check a person's identity with the central identification service from any place in the country. There are 18,900 radio phones available.

* Weapons. The police have approximately 10,000 revolvers and 60,000 pistols. Approximately 10,000 bulletproof waistcoats are available to police.

4. Training and Qualifications.

To join the police, one must be a Spanish citizen, over 18 years old, and have a driving permit. An applicant must also meet educational requirements. The basic police must have a basic education certificate, the superior police must have medium university degrees, and police specialists, such as medical doctors and psychologists, must have related university degrees. Men must be taller than 1.70 meters and women must be taller than 1.65 meters. (Decree 1593/1988).

After passing law and sociology courses, recruits must spend a minimum of 3 months at a special police training school. The average time spent at the police school is 1 year, which includes

9 months of theoretical instruction and 3 months of practical training. In police schools, aspiring police officers are subjected to physical, psychometric and personality tests.

Promotions almost always require new examinations and serving a minimum specified time at the previous level. Annual training is also provided to update officers' professional knowledge and increase specialization.

5. Discretion.

* Use of force. Police must detain any person who is suspected of participating in the commission of any act of delinquency, who has fled from prison or who commits a crime while being in detention or serving time in prison. They must also detain any person accused of crimes punishable by prison terms of more than 6 years or of lesser crimes if they believe the person will not appear before the court when summoned. (Penal Procedural Code, Articles 490 and 492).

* Stop/apprehend a suspect. Information not obtained.

* Decision to arrest. Information not obtained.

* Search and seizure. Judicial warrants are required for entrance into private homes to search and seize incriminating material, unless the owner of the home grants permission or a crime is in process. (Spanish Constitution, Art. 18.2).

* Confessions. Information not obtained.

6. Accountability. Minor infractions are dealt with by the police themselves; more serious offenses, by the courts.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of Accused.

* Rights of the accused at trial. Detained persons have the right to remain silent, to be informed immediately in a clear and understandable way of what they are accused, to ask for the production of evidence, to a speedy trial, to ask for legal counsel of their own choice, and to have counsel appointed "ex officio" in cases where they do not exercise the right to designate legal counsel. Interrogation without counsel is allowed only if, after 8 hours of notification to the local legal profession association, no lawyer has shown up and

the detainee consents to the interrogation. Detainees also have the right to ask that family members or acquaintances be informed of the detention; to be assisted by an interpreter if necessary; to be assisted by a doctor; and if a minor, to have parents or persons with parental authority informed. (Penal Procedural Code, Art. 384, 520).

During the hearings, the accused has the right to remain silent; to be confronted with witnesses; to have evidence shown in their presence; to be defended by a lawyer speaking in his behalf; and to speak in the last moment after all the other participants in the hearing, so as to be able to add whatever fact or point he deems advantageous. (Penal Procedure Code, articles 688-739).

* Assistance to the accused. From the moment of indictment, accused persons have the right to designate legal counsel. After the preliminary investigation, the dossier is sent to the court and if the accused person has not yet designated counsel, an "ex officio" counsel is appointed who is paid by the government. It is considered an honor by most lawyers to counsel and defend accused persons even if they are only paid a small fee. (Penal Procedural Code, Art. 384, 652).

2. Procedures.

* Preparatory procedures for bringing a suspect to trial. The investigating judge is aided by the police in preparing the case for trial. The police may initiate investigatory procedures, but they must report the existence of the case to the judge in a maximum of 24 hours from the time they begin. The public attorney may also ask the judge to carry out investigatory steps. (Penal Procedural Code, Articles 284, 288 and 295).

Violations receive a short trial and major offenses receive a trial in two parts, consisting of an investigatory stage and a hearing stage. Hearings are open to the public and orally conducted, although written briefings are made and attached to the proceedings.

* Official who conducts prosecution. Prosecution is a centrally organized function. All prosecutors are employees of the Ministry of Prosecution. They may be assigned to the high court, general courts, or lower courts; they are also assigned to specific geographic regions.

* Alternatives to trial. As there are no alternatives to trial, the majority of cases are decided by trial. Accused persons may plead guilty

at the beginning of the oral audience, and, if their lawyers agree, the case may be disposed of without hearings. But in cases where the public attorney requests a prison penalty of more than 6 years, the accused cannot plead guilty and must undergo hearing of the case. It is estimated that approximately 20% of all accused persons plead guilty.

It is also possible to drop the case when the alleged facts are not proven by investigation, when the facts are clearly not criminal, or when the suspected persons are obviously not responsible. In the last instance, cases are most frequently dropped when it is obvious that the suspect is mentally ill. (Penal Procedural Code, Art. 637).

* Proportion of prosecuted cases going to trial. Most prosecuted cases go to trial, although many crimes are not prosecuted because the offenders are not known. Major offenses are proportionally more frequently brought to trial than minor offenses because of the greater success of the police investigations in those cases.

* Pretrial incarceration conditions. Pretrial incarceration can only be decreed by the investigating judge. The judge must verify that the crime is punishable by more than 6 years in prison and that the suspect participated in the crime. Persons may be detained when the applicable penalties are shorter, if there is a risk they will flee or fail to appear before the judge when summoned.

Incarcerated persons have the right to have their cases heard prior to other persons. For cases in which a prison sentence exceeding 6 years is established, suspects must not be put into pre-trial incarceration for more than 2 years, except if there is a high likelihood that the person may flee if freed. (Penal Procedural Code, Art. 502, 503, 504).

* Bail procedure. Persons incarcerated for crimes punishable by penalties lasting more than 6 years may be freed from pretrial detention on bail.

* Proportion of pretrial offenders incarcerated. In 1990, there were about 13,303 inmates incarcerated while awaiting trial, comprising about 40% of the entire inmate population.

JUDICIAL SYSTEM

1. Administration.

Minor violations of unruly conduct are decided locally by lay justices of the peace. All other violations are decided by professional judges. Major offenses with a maximum 6-year prison penalty

are dealt with by single magistrate penal courts. All other major offenses are resolved by three member penal chambers which exist in all 50 provinces. Violation sentences and sentences pronounced by the single magistrate penal courts may be appealed to the provincial courts. Initial sentences on major cases that are announced by the provincial penal courts can be reviewed by the Penal Chamber of the Supreme Court.

2. Special Courts.

Exceptional courts are prohibited by sections of the Constitution (Art. 117.5, 6).

There are 70 juvenile courts, with 16 judges supervising the application of prison penalties and the situation of persons in pretrial incarceration.

Family courts exist, but deal solely with civil aspects of family affairs.

3. Judges.

* Number of judges. As of September, 1990, the number of professional judges was 2,607. A total approximation of 3,000 judges decide civil, penal, administrative and labor cases. The number of new judges increase by approximately 250 judges every year. This increase might be explained by the democratization of the country taking place in 1977, which prompted a dramatic increase in the social demand for judicial decisions.

There are 1,963 investigating judges, and most of them operate as civil court judges. There are 593 judges in the provincial courts, but they devote more time to civil cases than penal cases. The Penal Chamber of the Supreme Court is composed of 15 judges.

Only since the late 1970's have women begun to take judicial positions. Since the mid-1980s they have represented an average 50% of all new judges.

* Appointment and qualifications. Judges are appointed by the central government after passing a strenuous examination. There are between 20 and 30 candidates for every judicial vacancy. Candidates must have a law degree, which involves 5 years of study at law schools. After passing the examination, they study at the Judiciary School in Madrid for an average of 1 year.

On average, judges attain judiciary positions at 25 to 30 years old. Most judges have never been practicing lawyers. Compulsory retirement has recently been increased from 68 to 70 years old, although voluntary retirement is possible at 65.

The independence of judges is guaranteed by their legal immunity. They cannot be obliged to change from one judicial position to another nor

can they be dismissed except for legal reasons proven through disciplinary proceedings with procedural guarantees. The General Council of the Judiciary has handled about 1,500 yearly complaints, which have resulted in less than 10 sanctions.

PENALTIES AND SENTENCING

1. Sentencing process.

* Who determines the sentence? Decisions in penal cases are made exclusively by judges.

* Is there a special sentencing hearing? There is no hearing for sentencing decisions other than the hearing of the case.

* Which persons have input into the sentencing process? Psychiatrists, social workers, medical doctors and other professional specialists may be heard by judges, but their opinions are not binding. The Spanish Constitution has provisions for the participation of citizens in justice proceedings as members of juries (Art. 125), but a jury penal system has not yet been established.

2. Types of penalties.

* Range of penalties. Penalties include the following: prison sentences lasting from 1 day to 30 years, exile from 6 months to 20 years, suspension of public office, voting and eligibility rights and public honors from 1 month to 12 years, deprivation of driving permit from 1 month to 10 years, and fines from 5,000 to 100,000,000 pesetas (\$33 to \$666,000), and deprivation of Spanish citizenship for citizens not Spanish by birth.

The Penal Code provides for a maximum and minimum penalty in offense definitions. For instance, murder is punished with a prison sentence between 20 and 30 years, rape is punished with a prison sentence between 12 and 20 years, and robbery which results in homicide carries a 20 to 30 year prison sentence. According to the Constitution (Art. 25), penalties consisting of deprivation of liberty must address the social rehabilitation and reintegration of inmates into society.

* Death penalty. The death penalty was abolished by the present Constitution in 1978. When it was in existence, it was rarely imposed or carried out, being frequently commuted to long-term imprisonment. The Constitutional Court and the Penal Chamber of the Judiciary Supreme Court are presently very strict in the protection of human rights.

PRISON

1. Description.

* Number of prisons and type. As of August 1993, there were a minimum total of 83 prisons, 32 of which were used for sentenced persons and 36 for persons incarcerated pretrial. There were four maximum security prisons. Four prisons existed exclusively for women and another four only housed young offenders over 16 years old. There also existed one psychiatric penitentiary institution, one penitentiary hospital, and one open institution.

Each prison has medical wards. There are also observation and reformatory institutions, and open half-way and family houses for youth up to 18 years old, although these institutions are not considered prisons.

* Number of prison beds. In August 1993, there were 30,862 prison beds.

* Average daily/number of prisoners. The number of prisoners in 1990 totaled 33,537. (In 1988, the number of prisoners totalled 30,940.)

* Number of annual admissions. In 1990, there were 14,703 admissions into the prison system. (In 1986 there were 15,172 persons admitted to prison; in 1988, 13,465 were admitted.)

* Actual or estimated proportions of inmates incarcerated. The actual number of inmates in 1990, including detained persons awaiting trial for periods under 1 year, incarcerated by crime type:

Drug Crimes* 31,255

Violent Crimes** 5,967

Property Crimes*** 63,014

*Total persons incarcerated for drug crimes in 1987, 18,970; in 1988, 24,774; in 1989, 28,028. Many suspected of drug violations are foreigners.

**Total persons incarcerated for violent crimes in 1987, 5,813; in 1988, 5,830; in 1989, 5,938.

***Total persons incarcerated for property crimes in 1987, 63,496; in 1988, 62,791; in 1989, 64,777.

2. Administration.

The prison system is run from the Central government, with the only exception being Catalonia, where the autonomous regional government administers prisons located in the region.

* Number of prison guards. In 1990, there were 26,111 prison officers, of which 668 were administrative personnel; 10,878 were engaged directly in guarding functions; and 2,191 were treatment personnel, such as psychologists, social workers, medical doctors, and teachers. Excluding Catalonia, there were 8,500 male and 1,321 female guards.

* Training and qualifications. Admission to penitentiary positions is based on passing examinations which are held every year. University degrees are required to be placed in the higher technical jobs. In addition, personality tests are administered to the candidates, who must also submit themselves to medical examinations and drug tests. After succeeding in the examination, candidates attend practical training courses lasting 3 months. Every new recruit is taught by an experienced officer and is not allowed into the prison during the first 2 weeks of training.

At any given time, an average of 20% of prison personnel are attending job training courses which are continually mandated. Tuition is provided by the Spanish Penitentiary Research Institute, which publishes a periodical publication. There are also special treaties that allow prison personnel from Argentina, Chile and the United States of America to attend these classes offered by the institute.

* Expenditure on prison system. In 1990, the total expenditures on prisons were 65,128,229,418 pesetas (\$440,000,000 or \$13,500 per inmate annually).

3. Prison Conditions.

* Remissions. The prison sentence can be reduced if the inmate works. For every 2 days worked, 1 day of the sentence is taken off. However, this privilege is not granted if the inmate engages in bad behavior and/or attempts to escape. It is possible for inmates to be released after three-quarters of the imposed sentence has been served. In addition to the reduction of time obtained through work, early release can occur if the inmate engages in good behavior and if there is reason to believe the inmate would behave well outside the prison. (Penal Code, Art. 98, 100).

* Work/education. Work is a right and a duty for the inmate. Resocialization treatment cannot be imposed. The inmate keeps all personal rights not

affected by the sentence, including social security and civil rights. The penitentiary administration must protect the prisoner's life, bodily integrity and health, which includes taking the prisoner out of the institution to receive medical treatment if necessary. Prisons for women must provide obstetrical and gynecologic services. They must also have facilities and wards in which the inmates may place their children of minor age. (General Penitentiary Law, Art. 3,26,36,38; Manzanares: 907)

* Amenities/privileges. Institutions have special facilities for visits of family and close friends. These visits cannot occur more frequently than every 15 days. These private visits for legal and common-law spouses are allowed in special facilities and do not exceed five hours per visit. (General Penitentiary Law, article 53).

Leave is permitted in the case of the death or grave illness of a parent, a spouse, a son or daughter, or a sibling. Leave permits are also used as a means to prepare the inmates for living outside the institution after finishing the prison term. These types of permits must not exceed 7 consecutive days nor 36 or 48 days per year and are given according to the treatment phase of the inmate. To be granted a permit, the inmate has to have a record of good behavior and must have completed at least one-quarter of his sentence. (These kinds of permits are subject to a tremendous amount of public debate, because, in several cases, inmates on leave have committed new criminal offenses, among them some major sexual crimes followed by the murder of the victim.)

EXTRADITION AND TREATIES

* Extradition. Most European countries that have an extradition treaty with Spain are included in the European Council Extradition Treaty of March 21, 1983, ratified by Spain in 1985.

In addition, bilateral extradition treaties exist between Spain and the following countries: Argentina (1987), Australia (1987), Bolivia (1990), Brazil (1988), Canada (1989), Colombia (1993), Costa Rica (1987), Cuba (1988), Chile (1992), China (1992), Czechoslovakia (1987), Dominican Republic (1981), El Salvador (1894), Guatemala (1895), Hungary (1985), Korea (1992), Liberia (1894), Mexico (1978), Monaco (1882), Paraguay (1919), Peru (1989), Thailand (1983), Uruguay (1885), USA (1988), Venezuela (1894) and Yugoslavia (1980).

* Exchange of prisoners. Spain is also a party to the treaty on the transfer of sentenced persons of

the Council of Europe of 1983.

* Specified conditions. There are legal provisions regulating extraditions in the Penal Procedural Code and a law on passive extradition.

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(additional information not available)□