

No. 13934

**FEDERAL REPUBLIC OF GERMANY
and
YUGOSLAVIA**

**Treaty concerning judicial assistance in criminal matters.
Signed at Bonn on 1 October 1971**

Authentic texts: German and Serbo-Croatian.

Registered by the Federal Republic of Germany on 5 May 1975.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
YUGOSLAVIE**

**Traité relatif à l'entraide judiciaire en matière pénale. Signé
à Bonn le 1^{er} octobre 1971**

Textes authentiques : allemand et serbo-croate.

Enregistré par la République fédérale d'Allemagne le 5 mai 1975.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND
THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA CON-
CERNING JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

The Federal Republic of Germany and the Socialist Federal Republic of Yugoslavia,

Desiring to develop further and intensify the relations between the two States, and in particular to regulate and thereby facilitate intercourse between the two States in the field of judicial assistance in criminal matters,

Have agreed as follows:

Article 1. OBLIGATION TO AFFORD JUDICIAL ASSISTANCE

(1) The Contracting Parties undertake to afford each other, in accordance with the provisions and conditions specified below, the widest measure of judicial assistance in proceedings in respect of offences the prosecution of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

(2) Judicial assistance shall also be afforded:

- (a) in proceedings in respect of offences which, under the law of one or both of the States, are punishable only by a fine, provided that in at least one of the two States an appeal may be taken to a court having jurisdiction also in criminal matters;
- (b) in proceedings in respect of petty offences which, under Yugoslav law, are punishable by a court of summary jurisdiction;
- (c) in proceedings in respect of claims for damages or criminal prosecution;
- (d) in matters relating to the suspension or interruption of penalties or to the conditional suspension of a penalty or of a preventive and correctional measure;
- (e) in matters of clemency.

(3) This Treaty shall not apply:

- (a) to arrests;
- (b) to the enforcement of sentences;
- (c) to offences consisting solely of non-compliance with military obligations.

Article 2. GROUNDS FOR REFUSAL

Judicial assistance may be refused:

- (a) if the request concerns an offence, by its nature, which is not punishable under the law of the requested State;
- (b) if the requested State considers that execution of the request is likely to prejudice the sovereignty, security, public policy (*ordre public*) or other essential interests of that State.

¹ Came into force on 8 January 1975, i.e., 30 days after the exchange of the instruments of ratification, which took place at Belgrade on 9 December 1974, in accordance with article 27(2).

Article 3. POLITICAL OFFENCES

(1) Judicial assistance may also be refused if the request concerns an offence which the requested State considers a political offence or an offence connected with a political offence.

(2) The following shall not be deemed to be a political offence or an offence connected with a political offence for the purposes of paragraph 1:

- (a) a deliberate crime against human life, including an attempted crime or complicity, unless committed in open hostilities;
- (b) an offence which the Contracting Parties are obligated to prosecute pursuant to international agreements.

Article 4. SERVICE OF WRITS

(1) Proof of service shall be given by means of a dated receipt signed by the person served or by means of a declaration made by the competent authority of the requested State that service has been effected and indicating the form and date of such service. One or other of these documents shall be sent immediately to the requesting State. The requested State shall, if the requesting State so requests, indicate whether service has been effected in accordance with the law of the requested State.

(2) If service cannot be effected, the reasons shall be communicated immediately by the requested State to the requesting State.

(3) A request for service of a summons on a person accused of an offence in the requesting State must be transmitted to the requested State in sufficient time for service to be effected not later than 10 days before the date set for the appearance of the accused person in the territory of the requesting State.

(4) A summons shall not contain any notice of penalty in the event of the failure of a witness or expert to appear. If it contains such a notice, it shall nevertheless be served. However, a witness or expert who fails to answer such a summons shall not, for that reason, be subjected to any punishment or measure of restraint.

(5) If the requesting State considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons. The requested State shall then invite the witness or expert to appear and shall inform the requesting State of the reply of the witness or expert.

Article 5. TRAVELLING AND SUBSISTENCE EXPENSES

(1) Where a witness or expert answers a summons served on him in accordance with article 4, the allowances, including subsistence, to be paid and the travelling expenses to be refunded to him by the requesting State shall be at rates at least equal to those provided for in the scales and rules in force in the requesting State. The travelling and subsistence expenses refundable shall be calculated as from the place of residence of the witness or expert.

(2) The request for service of the summons, or the summons itself, shall indicate the approximate travelling and subsistence expenses refundable and allowances payable to the witness or expert by the competent authority of the requesting State.

Article 6. TRANSFER OF PERSONS IN CUSTODY AS WITNESSES

(1) A person in custody, whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting State, shall be temporarily

transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested State.

(2) Transfer shall be refused:

- (a) if the person in custody does not consent;
- (b) if transfer is liable to prolong his detention; or
- (c) if there are other overriding grounds for not transferring him to the territory of the requesting State.

(3) Transfer may be postponed if the presence of the person in custody is necessary at criminal proceedings pending in the territory of the requested State.

(4) Subject to the provisions of articles 2 and 3, where a person in custody is to be transferred, as a witness or for purposes of confrontation, by a third State to a Contracting State through the territory of the other Contracting State, the last-mentioned Contracting State shall grant transit to the person in custody, provided that he is not a national of that State.

(5) The transferred person shall remain in custody in the territory of the requesting State in a case coming within paragraph 1, and in the territory of the State through which transit is requested in a case coming within paragraph 4, unless the State from which transfer is requested applies for his release.

(6) Where, in accordance with article 16, paragraph 2, the requested State permits a person who is in custody in the territory of the requesting State to be present when a request for judicial assistance is executed, it shall keep him in custody for the duration of his stay in its territory and shall return him to the requesting State immediately after performance of the act of judicial assistance, unless the requesting State applies for his release. Article 7 shall apply *mutatis mutandis*.

Article 7. SAFE CONDUCT

(1) A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting State shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that State in respect of acts or convictions anterior to his departure from the territory of the requested State.

(2) A person, whatever his nationality, summoned before the judicial authorities of the requesting State to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested State and not specified in the summons.

(3) The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of twenty consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or, having left it, has returned.

Article 8. SEARCH AND SEIZURE

A request for judicial assistance involving search or seizure shall be executed only on the following conditions:

- (a) that the offence motivating the request is, by its nature, punishable also under the law of the requested State; and
- (b) that execution of the request is consistent with the law of the requested State.

Article 9. HANDING OVER OF PROPERTY

(1) Property and documents may be seized and handed over only on the basis of an order for seizure issued by the competent authority of the requesting State.

(2) Rights of the requested State and of third parties in any property and documents handed over shall not be affected.

(3) The requested State may delay the handing over of any property, documents or records requested, if it requires the said property, documents or records in connexion with pending criminal proceedings.

(4) The requested State may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting State expressly requests the transmission of originals, in which case the requested State shall make every effort to comply with the request.

Article 10. RETURN OF PROPERTY

Property and original records or documents transmitted in execution of a request for judicial assistance shall be returned by the requesting State as soon as possible to the requested State, unless the requested State waives the return thereof.

Article 11. INFORMATION FROM THE PENAL REGISTER

(1) Where information from the penal register is requested for the purpose of proceedings in accordance with article 1, paragraphs 1 and 2, such information shall be provided to the same extent as if it had been called for by a judicial authority of the requested State.

(2) Requests by a civil court or an administrative authority shall indicate the reason for the request. They shall be complied with to the extent permitted by the domestic laws and regulations of the requested State.

Article 12. CONTENT OF REQUESTS FOR JUDICIAL ASSISTANCE

(1) A request for judicial assistance shall be in writing; it shall be signed by the competent judge or official and shall bear the official seal.

The request shall include, in particular, the following:

(a) the most precise details possible of the person against whom criminal proceedings are being taken, his nationality and his place of permanent or temporary residence;

(b) a brief description and legal assessment of the offence, indicating the time and place of its commission, unless these details are ascertainable from annexed documents.

(3) In the case of requests for service, the address of the person to be served and the document to be served must also be indicated.

(4) Requests for searches of persons or premises or for the seizure and handing over of property or documents must be accompanied by an original or certified copy of the order for seizure.

(5) The requested State may call for such additional information as may be necessary for a decision in accordance with this Treaty or for performance of the act of judicial assistance.

Article 13. PROCEDURE

(1) Without prejudice to the diplomatic channel, written communication shall, except as otherwise provided in the Treaty, take place between the Ministries of Justice of the *Länder* (*Land* judicial authorities) of the Federal Republic of Germany, on the

one hand, and the Secretariats for Judicial Affairs of the Socialist Republics or Socialist Autonomous Provinces of the Socialist Federal Republic of Yugoslavia, on the other hand.

(2) In urgent cases, requests for judicial assistance may be communicated by the competent authorities of the requesting State directly, or through the International Criminal Police Organization (INTERPOL), to the competent authorities of the requested State. The documents evidencing execution shall be transmitted through the channel stipulated in paragraph 1.

Article 14. AUTHORITIES LACKING JURISDICTION

Where the authority which receives a request for judicial assistance has no jurisdiction to comply therewith, it shall, *ex officio*, transmit the request to the competent authority and shall so inform the requesting State through the same channel through which the request was addressed.

Article 15. EXECUTION OF REQUESTS

In the execution of a request, the law of the requested State shall be applied. However, if the requesting State expresses desire that a specific procedure should be followed, its request shall be complied with, provided that the law of the requested State does not preclude such a procedure.

Article 16. NOTIFICATION OF THE TIME AND PLACE OF EXECUTION

(1) On the express request of the requesting State, the requested State shall notify it of the time and place of execution of the request for judicial assistance.

(2) The interested judicial authorities and other parties to the proceedings may be present when the act of judicial assistance is performed, if the requested State consents.

Article 17. REASONS FOR REFUSAL

Reasons shall be given for the complete or partial refusal of judicial assistance.

Article 18. REQUESTS TO TAKE OVER THE PROSECUTION OF OFFENDERS

(1) Instead of itself proceeding to prosecute, either Contracting State may request the other Contracting State to take over the prosecution of a person who is habitually resident in the territory of that other State, particularly if he is a national of that other State, for an offence committed in the territory of the requesting State.

(2) Where a Contracting State requests the other Contracting State to take over the prosecution of an offender, the authorities of the requested State shall ascertain whether he can be prosecuted under the law of that State. If the competence of the requested State is established, prosecution may not be refused on the ground that the offence was committed abroad.

(3) An application for prosecution lodged by the injured party with a competent authority of the requesting State within the prescribed period shall also have effect, in the other State, if such an application is required under the law of both States. If an application for prosecution is required only under the law of the requested State, it may be supplied within the period prescribed by law. The said period shall begin to run from the date on which the request to take over the prosecution is received by the authority of the requested State competent to prosecute.

Article 19. PROSECUTION OF PETTY OFFENCES IN ACCORDANCE WITH A REQUEST TO TAKE OVER

(1) Where a Contracting State requests the other Contracting State to take over the prosecution of an offence committed in the territory of the requesting State,

prosecution shall be permissible even if, under the law of one or both of the States, the offence constitutes an offence of the kind referred to in article 1, paragraph 2 (a), or a petty offence.

(2) Traffic violations committed in a Contracting State shall, on the request of that State, be prosecuted in the other Contracting State as if they had been committed in its territory. The traffic regulations in force at the place where the violation was committed shall, however, be taken as the basis for the prosecution.

Article 20. PROCEDURE IN THE CASE OF REQUESTS TO TAKE OVER

(1) A request to take over the prosecution of an offender shall be accompanied by:

- (a) the original records of the case, or copies thereof, and any items of evidence;
- (b) a statement of the facts of the case;
- (c) a copy of the provisions applicable to the offence under the law in force at the place where it was committed;
- (d) in addition, in cases coming within article 19, paragraph 2, a copy of the traffic regulations in force at the place where the violation was committed.

(2) The requesting State shall be notified as soon as possible of the action taken on the request. Upon completion of the proceedings, an original or certified copy of the final decision shall be transmitted to the requesting State. Property and records transmitted by the requesting State shall be returned to it free of cost at the same time unless the requesting State waives the return thereof.

(3) Expenses arising from the implementation of articles 18 and 19 and of this article shall not be refunded.

Article 21. EFFECTS OF A REQUEST TO TAKE OVER THE PROSECUTION OF AN OFFENDER

Where prosecution has been initiated in the requested State in accordance with a request to take over, the authorities of the requesting State shall refrain from further prosecution of, or measures of execution against, the accused person in respect of the same offence:

- (a) if the case has been finally dismissed by the competent court of the competent authority for reasons of substantive law;
- (b) if the accused person has been finally acquitted;
- (c) if the penalty or preventive and correctional measure imposed, or the fine imposed by an administrative authority, has been executed or, by virtue of a law or an act of clemency, can no longer be executed; or
- (d) so long as execution of the penalty or preventive and correctional measure, or of the fine imposed by an administrative authority, is suspended in whole or in part or the pronouncement of a sentence is postponed.

Article 22. EXCHANGE OF INFORMATION FROM THE PENAL REGISTER

(1) Each Contracting Party shall inform the other Contracting Party of all entries in the penal register relating to nationals of the last-mentioned Party.

(2) Information from the penal register shall be exchanged once every three months between the Federal Ministry of Justice of the Federal Republic of Germany and the Federal Council for Judicial Affairs of the Socialist Federal Republic of Yugoslavia.

Article 23. LANGUAGES TO BE USED

(1) The authorities of the two Contracting Parties shall draw up requests and all other documents in their own official language. Except as otherwise provided in paragraph 2, certified translations in an official language of the other Contracting Party shall be annexed thereto. For the purposes of this Treaty, official languages are, in the Federal Republic of Germany, the German language, and, in the Socialist Federal Republic of Yugoslavia, the Serbo-Croatian or Croato-Serbian language and the Slovenian and Macedonian languages.

(2) In the case of requests to take over the prosecution of offenders in accordance with article 20, certified translations of the request and of the statement of the facts of the case shall suffice. Translations in an official language of the other Contracting Party need not be annexed to information from the penal register exchanged in accordance with article 22.

Article 24. AUTHENTICATION

Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication.

Article 25. EXPENSES

Execution of requests for judicial assistance shall not entail refunding of expenses except those incurred by the attendance of an expert in the territory of the requested State or the transfer of a person in custody in accordance with article 6.

Article 26. TERRITORIAL APPLICATION

This Treaty shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Socialist Federal Republic of Yugoslavia within three months from the date of entry into force of this Treaty.

Article 27. RATIFICATION; ENTRY INTO FORCE; DENUNCIATION

(1) This Treaty shall be ratified; the instruments of ratification shall be exchanged at Belgrade as soon as possible.

(2) This Treaty shall enter into force 30 days after the exchange of instruments of ratification.

(3) Upon the entry into force of this Treaty, all agreements concluded between the Contracting Parties on the same subject shall cease to have effect.

(4) The Treaty shall remain in force until the expiry of one year from the date on which it is denounced by either Contracting Party.

DONE at Bonn on 1 October 1971 in two original copies, each in the German and Serbo-Croatian languages, both texts being equally authentic.

For the Federal Republic of Germany:

PAUL FRANK

HERMANN MAASSEN

For the Socialist Federal Republic of Yugoslavia:

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