

No. 14593

**FRANCE
and
ROMANIA**

**Convention concerning reciprocal legal assistance in
criminal matters and extradition. Signed at Paris on
5 November 1974**

*Authentic texts: French and Romanian.
Registered by France on 19 February 1976.*

**FRANCE
et
ROUMANIE**

**Convention relative à l'entraide judiciaire en matière pénale
et à l'extradition. Signée à Paris le 5 novembre 1974**

*Textes authentiques : français et roumain.
Enregistrée par la France le 19 février 1976.*

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE
SOCIALIST REPUBLIC OF ROMANIA CONCERNING
RECIPROCAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
AND EXTRADITION

The President of the French Republic, and
The President of the Socialist Republic of Romania,

Desiring to regulate reciprocal legal assistance between the French Republic and the Socialist Republic of Romania in the field of criminal law and thereby to contribute to the development of their friendly relations on the basis of the principles of respect for sovereignty and national independence, non-interference in internal affairs, equality of rights and mutual benefit,

Have decided to conclude this Convention and to that end have appointed as their plenipotentiaries:

The President of the French Republic:

Mr. Jean Sauvagnargues, Minister for Foreign Affairs;

The President of the Socialist Republic of Romania:

Mr. George Macovescu, Minister for Foreign Affairs,
who, having exchanged their full powers, found in good and due form, have agreed on the following provisions:

Chapter I. RECIPROCAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 1. The Contracting States undertake to provide each other with reciprocal legal assistance in criminal matters under the conditions laid down in this chapter.

Article 2. 1. Requests for reciprocal assistance shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State.

2. Documents relating to the execution of requests shall be transmitted through the same channel.

Article 3. Requests for reciprocal assistance and documents relating to the execution of such requests shall be drawn up in the language of the requesting State and accompanied by a certified translation in the language of the requested State.

Article 4. 1. Requests for reciprocal assistance and the documents accompanying them shall bear the signature and seal of or be certified by a competent authority. Such documents shall not require authentication.

2. The form of requests for reciprocal assistance shall be determined by the law of the requesting State.

¹ Came into force on 1 September 1975, i.e., the first day of the second month following the date of the exchange of the instruments of ratification, which took place at Bucharest on 28 July 1975, in accordance with article 39 (1) and (2).

Article 5. 1. Requests for reciprocal assistance shall contain the following particulars:

- the nature of the case;
- the name of the requesting authority;
- the name of the requested authority;
- the description of the offence;
- the identity of the person concerned including, *inter alia*, his surname and given name, date and place of birth, domicile or residence, nationality and occupation, where such information is available.

2. The following information shall also be supplied:

(a) in the case of requests for notification:

- the nature of the document or decision;
- the name and address of the intended recipient;
- the status of the intended recipient in the proceedings;

(b) in the case of letters rogatory, all necessary particulars concerning the facts of the case and the task entrusted to the requested authority, including the names and addresses of witnesses and the questions which are to be put to them.

Article 6. 1. Requests for reciprocal assistance shall be executed in accordance with the law of the requested State.

2. Notification or service shall be deemed to have been duly carried out when it is confirmed by a receipt dated and signed by the recipient or by a certificate issued by the competent authority stating that delivery has been effected and indicating the manner and date thereof.

Article 7. If the requested State is unable to execute the request for reciprocal assistance, it shall immediately so inform the requesting State, stating the reasons for non-execution and returning the documents sent to it.

Article 8. The requested State shall waive reimbursement of the costs incurred in providing reciprocal assistance under the terms of this chapter, with the exception of the expenses and fees of experts.

Article 9. 1. No witness or expert of any nationality who, in response to a summons, appears voluntarily before the judicial authorities of the requesting State may be prosecuted, detained or subjected to any restriction of his personal liberty in the said State by reason of acts committed or convictions pronounced prior to his entry into the territory of the requesting State.

2. This immunity shall cease if the witness or expert, having had the opportunity to leave the territory of the requesting State during an uninterrupted period of 15 days after the date on which his presence ceases to be required by the judicial authorities, nevertheless remained in that territory or returned thereto after leaving it.

Article 10. 1. Witnesses and experts shall be entitled to reimbursement of their travel and subsistence expenses and to an allowance, such reimbursement and allowance to be paid by the requesting State. The subsistence expenses and allowances shall be at least equal to those provided for under the scales and regulations in force in the State in which the hearing is to take place.

2. If a witness or expert so requests, he shall be advanced, through the diplomatic mission or the consular post of the requesting State, all or part of his travel and subsistence expenses.

Article 11. 1. The Contracting States shall report to each other all convictions pronounced by the judicial authorities of one of them against nationals of the other which are required to be entered in the court records in their own territories.

2. The said reports shall be transmitted at six-month intervals through the channel mentioned in article 2.

Article 12. The Contracting States shall, at the request of their judicial authorities, transmit to each other extracts from the court records, in accordance with the legislation of the requested State.

Article 13. 1. Either Contracting State may report to the other, with a view to prosecution, any offences committed in its territory by nationals of the other State who have returned to the territory of that State.

2. To that end, records, information and articles relating to the offence shall be transmitted to the requested State.

3. The requested State shall announce the action taken pursuant to the report and, where necessary, shall transmit a copy of the decision taken.

Article 14. Reciprocal assistance shall not be provided when:

- (a) the offence giving rise to the request for reciprocal assistance is not extraditable under the provisions of articles 21, 22 and 23;
- (b) the requested State considers that execution of the request for reciprocal assistance might impair its sovereignty or security or the maintenance of law and order.

Article 15. The Ministries of Justice of the Contracting States shall transmit to each other, upon request, information concerning their criminal laws.

Chapter II. EXTRADITION

Article 16. The Contracting States undertake to surrender to each other, subject to the provisions and conditions laid down in the following articles, persons who are present in the territory of one of the two States and are being proceeded against by the judicial authorities of the other State or who are wanted by the said authorities for the carrying out of a sentence.

Article 17. Extradition shall be granted only if the act or acts giving rise to the request for extradition constitute offences under the legislation of both States.

Article 18. Extradition shall be granted in respect of:

- (a) an act or acts punishable under the laws of the Contracting States by deprivation of liberty for a maximum period of at least two years or by a more severe penalty;
- (b) sentences imposed by the courts of the requesting State for acts referred to in subparagraph (a) when the length of the sentence to be served is at least six months.

Article 19. Extradition shall not be granted if the person whose extradition is requested was a national of the requested State at the time when the offence was committed.

Article 20. Extradition shall not be granted when:

- (a) the act was committed in the territory of the requested State;
- (b) the offence in respect of which extradition is requested was committed in the territory of a third State and the legislation of the requested State does not provide for proceedings in respect of an offence of this type if it was committed outside its territory or does not permit extradition for the offence which gave rise to the request for extradition;
- (c) under the legislation of the two Contracting States, criminal proceedings may not be instituted without a prior complaint from the injured person;
- (d) under the legislation of the requesting or requested State, amnesty is granted for the act in respect of which extradition is requested or prosecution or punishment is barred by lapse of time when the request is received;
- (e) final judgment for the same act has been passed by the judicial authorities of the requested State upon the person whose extradition is requested.

Article 21. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested State as a political offence or as an offence connected with a political offence.

This rule shall also apply if the requested State has substantial grounds for believing that the request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion or that that person's position may be prejudiced for any of these reasons.

Article 22. Extradition shall not be granted for offences regarded by the requested State as military offences not constituting offences under ordinary criminal law.

Article 23. Extradition shall not be granted when the offence in respect of which it is requested is regarded by the requested State as an offence in connexion with taxes, duties, customs or exchange.

It may be decided otherwise, however, by an exchange of letters for each offence or category of offences.

Article 24. Extradition may be refused when the judicial authorities of the requested State have initiated proceedings in respect of the same act against the person whose extradition is requested.

Article 25. The extradited person may not be proceeded against or be sentenced in respect of an offence other than that for which extradition has been obtained; he shall not be liable to serve a sentence other than that for which extradition has been obtained and may not be surrendered to a third State, unless:

- (a) there is a prior agreement with the requested State;
- (b) if, having had the opportunity to do so, he has not left the territory of the requesting State within 30 days of his final discharge, or has voluntarily returned to that territory after leaving it.

Article 26. If the description of the offence is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 27. Communications regarding extradition shall be transmitted through the diplomatic channel.

Article 28. 1. The request for the extradition of a person being proceeded against shall be accompanied by the original or an authenticated copy of the warrant of arrest or other document having the same effect and issued in accordance with the procedure laid down in the law of the requesting State. The document must state the circumstances in which the offence was committed, the time and place of its commission, its legal description and a reference to the relevant enactments, and where the offence has caused material damage, all available information on the nature and extent of such damage.

2. The request for the extradition of a person who has been convicted shall be accompanied by the original or an authenticated copy of the final judgment.

3. In both cases, the request shall be accompanied by the text of the enactments relevant to the offence and, if possible, a description and photograph of the person and any other information which may serve to establish his identity and nationality.

4. The requested State may ask the requesting State to provide supplementary information if the information already provided in accordance with the preceding paragraphs is found to be incomplete or insufficient.

Article 29. 1. In case of urgency and at the request of the competent authorities of the requesting State, the requested State may, in accordance with its legislation, provisionally arrest the person sought pending receipt of the request for extradition and the documents referred to in article 28.

2. The request for provisional arrest shall be sent direct either by post or telegraph or by any other means affording evidence in writing. It shall state that one of the documents mentioned in article 28 exists and that the request for extradition will be sent as soon as possible. It shall state the offence in respect of which extradition is requested, the time and place of its commission and the description of the person sought, which shall be as accurate as possible. The requesting authority shall be informed without delay of the results of its request.

Article 30. 1. The requested State may terminate the provisional arrest if, within a period of 30 days after the arrest, it has not received the request for extradition and the documents mentioned in article 28.

At the instance of the requesting State, that period may be extended to 45 days if special circumstances require it.

The possibility of provisional release at any time is not excluded, but the requested State shall take any measures which it considers necessary to prevent the escape of the person sought.

2. Release shall not prevent re-arrest and extradition if the request for extradition is received after the expiration of the period mentioned in paragraph 1 of this article.

Article 31. The requested State shall inform the requesting State of its decision with regard to extradition.

If extradition is granted, the requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to extradition.

If, because of exceptional circumstances, the representative of the requesting State does not appear on the date and in the place designated for the surrender of the person whose extradition has been granted and if no postponement has been requested, the arrested person shall be released within five days. If a postponement has been requested, this period may be extended to 15 days.

If the person claimed has not been taken over under the conditions mentioned in the preceding paragraph, the requested State may, upon receiving a new request, refuse to extradite him for the same act.

Article 32. The requested State may postpone the surrender of a person who, in its territory, is the subject of proceedings or a conviction entailing a sentence depriving him of liberty for an offence other than that giving rise to the extradition.

In case of postponement, the person may be surrendered only after judgment has been rendered and, in case of conviction, after the sentence has been served.

If postponement of the surrender might lead in the requesting State to the barring of prosecution by reason of lapse of time or might seriously hinder the judicial process, the requested State may temporarily surrender the person requested. The surrendered person shall be returned to the requested State after completion of the proceedings for which extradition has been granted.

Article 33. 1. If extradition is requested concurrently by more than one State, either for the same act or for different acts, the requested State shall make its decision freely, having regard to all the circumstances and especially the possibility of subsequent extradition between the requesting States, the respective dates of the requests, the relative seriousness and the place of commission of the offences.

2. In the case provided for in the preceding paragraph, the requested State may, in granting the extradition, authorize the requesting State to surrender the person whose extradition has been granted to it to the third State which claimed him concurrently.

Article 34. If the extradited person evades prosecution, sentencing or the serving of a sentence and returns to the territory of the requested State, he may be re-extradited.

Article 35. At the instance of the requesting State, the requested State shall seize and hand over, in the manner prescribed by its legislation, property:

- (a) which may serve as evidence;
- (b) which has been acquired as a result of the offence and was found before or after the surrender of the extradited person.
- (c) which was acquired in exchange for property acquired as a result of the offence.

The property shall be handed over even if extradition cannot be carried out owing to the escape or death of the person claimed.

The property shall be handed over in exchange for a receipt.

If the requested property is necessary to the requested State, it may be temporarily retained, or handed over to the requesting State on condition that it be returned.

The rights of the requested State or third States in the property shall be preserved. The property in which those rights exist shall be returned to the requested State without charge as soon as possible.

Article 36. 1. Each Contracting State shall, at the request of the other State, grant transit across its territory for a person surrendered to the latter by a third State. The request must be supported by documents establishing that the offence is extraditable under this Convention; moreover, the documents mentioned in article 28, paragraph 1 or paragraph 2, must be presented.

2. The State requested to grant transit shall not be required to authorize it in the case of a person whose extradition it has requested or intends to request.

Article 37. 1. Expenses occasioned by extradition in the territory of the requested State shall be borne by that State. The expenses of air transport shall, however, be borne by the requesting State.

2. Expenses occasioned by transit in the territory of the State requested to grant transit shall be borne by the requesting State.

Article 38. The Contracting States shall inform each other of the results of the proceedings instituted against the extradited person or of the judgment passed. If a final judgment has been pronounced against that person, a copy of it shall also be provided.

Chapter III. FINAL PROVISIONS

Article 39. 1. This Convention shall be ratified. The exchange of the instruments of ratification shall take place in Bucharest as soon as possible.

2. This Convention shall enter into force on the first day of the second month following the date of the exchange of the instruments of ratification.

3. This Convention shall be concluded for an indefinite period.

Either State may denounce it by written notification to the other State, such denunciation to take effect one year from the date it was sent.

IN WITNESS WHEREOF the respective plenipotentiaries have signed this Convention and have affixed their seals thereto.

DONE in Paris, on 5 November 1974 in two copies in the French and Romanian languages, both texts being equally authentic.

For the French Republic:

[Signed]

JEAN SAUVAGNARGUES

For the Socialist Republic of Romania:

[Signed]

GEORGE MACOVESCU