

**No. 15123**

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**AUSTRIA  
and  
HUNGARY**

**Treaty concerning mutual assistance in criminal matters.  
Signed at Budapest on 25 February 1975**

*Authentic texts: German and Hungarian.  
Registered by Austria on 22 November 1976.*

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**AUTRICHE  
et  
HONGRIE**

**Accord relatif à l'entraide judiciaire en matière pénale.  
Signé à Budapest le 25 février 1975**

*Textes authentiques : allemand et hongrois.  
Enregistré par l'Autriche le 22 novembre 1976.*

## [TRANSLATION — TRADUCTION]

TREATY<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE HUNGARIAN PEOPLE'S REPUBLIC CONCERNING MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The Federal President of the Republic of Austria and the Presidential Council of the Hungarian People's Republic, desiring to facilitate legal relations between the two States, have agreed to conclude a Treaty concerning mutual assistance in criminal matters and have for that purpose appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Erich Bielka, Federal Minister for Foreign Affairs,

The Presidential Council of the Hungarian People's Republic: Frigyes Puja, Minister for Foreign Affairs,

who, having exchanged their full powers, found in good and due form, have agreed on the following:

*Article 1.* (1) The Contracting States undertake to afford each other, on the request of the judicial authorities (courts, State Counsel's offices), mutual assistance, in accordance with the provisions of this Treaty, in proceedings in respect of legally punishable offences.

(2) Mutual assistance shall include especially the conducting of inquiries and investigations, such as the interrogation of accused persons, witnesses and experts, inspections, searches and seizures of property, the transmission of records and property relevant to a criminal proceeding and the service of documents.

(3) Mutual assistance shall also be afforded in matters relating to pardons and in proceedings concerning claims for compensation for unjustified detention or unjustified conviction.

(4) Mutual assistance for the enforcement of sentences shall not be afforded.

*Article 2.* Mutual assistance shall not be afforded if the request concerns an offence which is not legally punishable under the law of the requested State or which the requested State considers a political, military or fiscal offence or a contravention of currency regulations, monopoly regulations or regulations concerning the import, export, transit and control of goods.

*Article 3.* Mutual assistance shall not be afforded if the requested State considers that execution of the request might prejudice its sovereignty, endanger its security or contravene principles of its legal order.

*Article 4.* The judicial authorities of the two Contracting States shall communicate with each other through the Minister of Justice of the Republic of Austria, on the one hand, and the Minister of Justice of the Hungarian People's Republic or the State Counsel General of the Hungarian People's Republic, on the other hand. The foregoing shall not preclude the use of the diplomatic channel.

<sup>1</sup> Came into force on 18 July 1976, i.e., the sixtieth day after the date of the exchange of the instruments of ratification, which took place at Vienna on 19 May 1976, in accordance with article 26 (1).

*Article 5.* (1) A request for assistance shall be submitted in writing. It shall be signed by the competent judge or State Counsel and shall bear the official seal or stamp of the requesting judicial authority, but shall not require authentication.

(2) The request shall contain the following:

- (a) a brief description of the offence, indicating the place and date of commission;
- (b) the legal assessment of the offence;
- (c) the most precise details possible concerning the accused person, his nationality and his place of residence or sojourn;
- (d) in the case of interrogations, the address of the persons to be interrogated and the questions to be put to them;
- (e) in the case of service of documents, also the address of the person concerned and the nature of the document to be served on him.

(3) Requests for searches of persons or premises or for seizures of property shall be accompanied by a duplicate or an authenticated copy of the order issued by the judicial authority.

*Article 6.* In the execution of the request, the law of the requested State shall be applied. Divergent procedural provisions of the requesting State shall, however, be applied if so desired, provided that this is not inconsistent with the law of the requested State.

*Article 7.* (1) If the address of a person who is to be interrogated or on whom a document is to be served is not precisely indicated or proves to be incorrect, the requested judicial authority shall, if possible, ascertain the correct address.

(2) If the requested judicial authority is not competent to execute the request, it shall transmit the request to the competent judicial authority and shall so inform the requesting judicial authority.

*Article 8.* If assistance is entirely or partially refused, or if difficulties in executing the request are encountered, the requesting judicial authority shall be notified and informed of the reason.

*Article 9.* Subject to the provisions of article 10, translations of requests submitted under this Treaty and of annexed documents shall not be required.

*Article 10.* Documents for service shall be accompanied by a translation into the language of the requested State. The translation must either be officially produced or be certified correct by an interpreter officially appointed in one of the Contracting States; authentication of the signature of the interpreter shall not be required.

*Article 11.* Proof of service shall be given by means of either a certificate of service dated and signed by the officer effecting service and the person served or a declaration made by the requested judicial authority that service has been effected and stating the form and date of such service.

*Article 12.* In executing requests for assistance, judicial authorities shall, if necessary, apply the same means of coercion as they would apply in executing requests for assistance from judicial authorities of their own State.

*Article 13.* (1) If a person resident in one of the Contracting States is summoned as a witness or expert by a judicial authority of the other Contracting State, the summons shall be served on him by the competent judicial authority of the requested State. The summons shall not contain any notice of coercive measures. If the witness or expert fails to answer the summons, he shall not be subjected to the consequences normally provided by law in case of non-appearance.

(2) The summons shall indicate in detail the entitlement of the witness or expert to reimbursement of travel and subsistence expenses, compensation for loss of time and, in the case of an expert, remuneration for services rendered.

(3) The requested State shall, on the request of the person summoned, grant him an advance to cover travel and subsistence expenses. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting State.

*Article 14.* (1) A witness or expert answering a summons served on him in accordance with article 13 shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the requesting State for an offence committed by him anterior to his departure from the requested State or for any other prior reason.

(2) Safe conduct shall cease if the witness or expert remains in the requesting State for a period of more than 15 consecutive days from the date when his presence is no longer required by the judicial authorities, although he could and should have left that State, or, having left it, has returned.

*Article 15.* (1) If a person summoned as a witness is in custody in the requested State by order of a judicial authority, he shall, on application by the requesting State, be transferred to that State for a hearing, provided that he consents and there are no overriding grounds for not transferring him.

(2) The witness shall remain in custody in the requesting State and shall be returned to the requested State immediately after the hearing.

*Article 16.* (1) If a person resident in one of the Contracting States is summoned by a judicial authority of the other Contracting State to answer a charge against him, the summons shall be served on him by the competent judicial authority of the requested State. The summons shall not contain any notice of coercive measures in case of non-appearance. The requested State shall not order any coercive measures to compel the appearance of the accused person in the requesting State.

(2) If the accused person answers the summons, he shall not be prosecuted or detained or subjected to any restriction of his personal liberty in the requesting State for an offence committed anterior to his departure from the requested State and not specified in the summons or for any other prior reason.

(3) Safe conduct shall cease if the accused person remains in the requesting State for a period of more than 15 days from the date when the proceeding to which the summons relates is concluded or from the end of a sentence restrictive of liberty imposed on him in that proceeding, although he could and should have left that State, or, having left it, has returned.

*Article 17.* (1) The transmission of originals of records or other documents shall be requested only if the transmission of duplicates (or copies) would not suffice.

(2) Records or property required for a criminal proceeding in the requested State may be withheld for the duration of the proceeding.

(3) Any rights of the requested State or of third parties in property which is transmitted shall not be affected. Records or property transmitted shall be returned as soon as possible.

*Article 18.* If a national of a Contracting State has committed in the territory of the other Contracting State an offence which is legally punishable in both Contracting States, the State in which the offence was committed may request the other Contracting State, through the channel specified in article 4, to undertake prosecution for the offence.

*Article 19.* (1) The requested State shall immediately bring the request to the notice of its competent judicial authorities with a view to criminal prosecution. Those authorities shall initiate prosecution in accordance with the laws of the requested State, in the same manner as for an offence committed in the territory of their own State.

(2) Traffic offences shall be judged in the requested State on the basis of the traffic regulations in force at the place of commission of the offence.

*Article 20.* The request to undertake prosecution shall contain a brief statement of the facts of the case. It shall be accompanied by:

- (a) originals, authenticated duplicates or authenticated copies of the records, together with any relevant items of evidence;
- (b) a copy of the provisions which define the offence and prescribe the penalty and which are applicable under the law in force at the place of commission of the offence;
- (c) in the case of traffic offences, in addition, a copy of the traffic regulations on the basis of which the offence is to be judged.

*Article 21.* (1) The requested State shall notify the requesting State as soon as possible, through the channel specified in article 4, of the action taken on the request and the result of the criminal proceeding and shall attach the original or an authenticated duplicate or copy of any final decision.

(2) Any rights of the requested State or of third parties in property which is transmitted shall not be affected. Records or property transmitted shall be returned as soon as possible.

*Article 22.* The request to undertake prosecution shall have the effect of suspending the running of the prescriptive period in the requested State. The foregoing shall apply as from the date on which the request is dispatched to the requested State.

*Article 23.* The judicial authorities of the requesting State shall, in view of the request to undertake prosecution, temporarily refrain from measures of prosecution and, if the accused person has already been sentenced, from measures of execution in respect of the act to which the request relates. They shall permanently refrain from such measures if in the requested State:

- (a) the sentence has been served, remitted or wholly or partly suspended or has become prescribed owing to a lapse of time;
- (b) the accused person has, with final effect, been acquitted or discharged on the evidence or because the act does not constitute a punishable offence.

*Article 24.* The Contracting Parties shall waive reimbursement of the expenses incurred by them in connexion with the application of this Treaty in their respective territories. However, expenditure resulting from a request for the taking of expert testimony or for the transfer of a person who is in custody in the requested State shall be reimbursed by the requesting State. The obligation to refund any advance granted in accordance with article 13, paragraph 3, shall not be affected.

*Article 25.* This Treaty shall be ratified; the instruments of ratification shall be exchanged at Vienna.

*Article 26.* (1) This Treaty shall enter into force on the sixtieth day after the exchange of the instruments of ratification.

(2) The Treaty is concluded for a term of five years and shall thereafter remain in force unless one of the Contracting States has given notice of termination in writing to the other Contracting State through the diplomatic channel six months before the expiry of the five-year term.

(3) If the Treaty has not been terminated in accordance with paragraph 2, it shall remain in force indefinitely unless one of the Contracting States gives notice of termination in writing to the other Contracting State through the diplomatic channel; in the latter case, it shall remain in force for one year after notice of termination.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States have signed this Treaty and have thereto affixed their seals.

DONE at Budapest on 25 February 1975, in two original copies, in the German and Hungarian languages, both texts being equally authentic.

For the Republic of Austria:  
E. BIELKA

For the Hungarian People's Republic:  
PUJA FRIGYES

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