

No. 21762

**ROMANIA
and
CUBA**

**Convention concerning legal assistance in civil, family and
criminal matters. Signed at Bucharest on 28 June 1980**

Authentic texts: Romanian and Spanish.

Registered by Romania on 28 March 1983.

**ROUMANIE
et
CUBA**

**Accord concernant l'entraide judiciaire en matière civile,
familiale et pénale. Signé à Bucarest le 28 juin 1980**

Textes authentiques : roumain et espagnol.

Enregistré par la Roumanie le 28 mars 1983.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE SOCIALIST REPUBLIC OF ROMANIA
AND THE REPUBLIC OF CUBA CONCERNING LEGAL ASSIST-
ANCE IN CIVIL, FAMILY AND CRIMINAL MATTERS

The Socialist Republic of Romania and the Republic of Cuba,

Wishing to develop fraternal relations between the two States, on the basis of respect for the principles of national independence and sovereignty, equality of rights, non-interference in internal affairs and mutual advantage,

And wishing further to improve co-operation in the field of legal assistance in civil, family and criminal matters, have decided to conclude this Convention and for this purpose have appointed as their plenipotentiaries:

The Socialist Republic of Romania: Stefan Andrei, Minister for Foreign Affairs;

The Republic of Cuba: Isidoro Malmierca Peoli, Minister for Foreign Affairs;

who have agreed as follows:

Chapter I. GENERAL PROVISIONS

Article 1. 1. Citizens of each Contracting Party shall enjoy in the territory of the other Contracting Party, in respect of their personal and property rights, the same legal protection as citizens of that other Party.

2. Citizens of each Contracting Party shall have free access to the courts, organs of the procurator's office and other authorities (hereinafter referred to as "judicial authorities") of the other Contracting Party having jurisdiction in civil, family and criminal cases and shall be entitled to appear before them, to present claims and petitions, under the same conditions as citizens of that other Contracting Party.

3. The provisions of this Convention shall apply both to individuals and to bodies corporate instituted in accordance with the laws of the Contracting Party in whose territory they have their office.

Article 2. Citizens of one Contracting Party appearing before the courts of the other Contracting Party as plaintiffs or third parties shall not, if they have their domicile, residence or office in the territory of one Contracting Party, be required to provide any security or deposit, however designated, by reason of their status as foreigners or of the absence of domicile, residence or office in the territory of the Contracting Party to which the court applied to belongs.

Article 3. For the purpose of applying the provisions of this Convention and except as otherwise provided therein, the judicial authorities of the two Contracting Parties shall communicate with one another through their Ministries of Justice.

Article 4. 1. Applications for judicial assistance and accompanying documents shall be transmitted in the language of the applicant Party and shall be accom-

¹ Came into force on 3 August 1981, i.e., the sixtieth day following the exchange of the instruments of ratification, which took place at Havana on 4 June 1981, in accordance with article 49 (2).

panied by translations. The applications shall be signed and shall bear the official seal.

2. The translation shall be certified by an official translator, by the authority issuing the document or by the diplomatic mission or consular office of one of the Contracting Parties.

Article 5. Documents drawn up or certified in the territory of one Contracting Party by a State authority of that Party or by a person authorized for that purpose, within the limits of their competence, in the form prescribed by law and sealed with the official seal, shall be valid in the territory of the other Contracting Party without further certification. Signatures authenticated in accordance with the law of the Contracting Party in whose territory the document is issued shall also be valid.

Article 6. The Ministries of Justice and the General Procurators' offices of the Contracting Parties shall provide each other, upon request, with information concerning the legal provisions which are or have been in force in their respective States in the matter of civil, family and criminal law and of the law of criminal and civil procedure.

Chapter II. LEGAL ASSISTANCE

Article 7. 1. Citizens of one Contracting Party appearing before a judicial authority of the other Contracting Party shall be accorded legal assistance free of charge and exemptions from and reductions in charges under the same conditions as citizens of that other Party.

2. Reliefs of the kind provided for in paragraph 1 of this article, accorded to a party to an action instituted before a judicial authority of one of the Contracting Parties, shall also extend to the execution of letters rogatory and to the service of documents in the same case, effected in the territory of the other Contracting Party.

Article 8. 1. The certificate relating to material circumstances necessary for obtaining the reliefs provided for in article 7 shall be issued by the competent authority of the Contracting Party in whose territory the person making such a petition has his domicile or residence.

2. If the petitioner has his domicile or residence in the territory of a third State, it shall be sufficient if the certificate is issued by such diplomatic mission or consular office of the Contracting Party of which the petitioner is a citizen as has competence in respect of his place of domicile or residence.

Article 9. The judicial authority seized of a petition for free legal assistance and reliefs of the kind referred to in article 7 shall decide thereon in accordance with the law of its own State and may, if necessary, request additional information.

Article 10. 1. If a citizen of a Contracting Party, having his domicile or residence in the territory of either Contracting Party and appearing before a court of the other Contracting Party, wishes to avail himself of the reliefs provided for in article 7, he may so petition the competent judicial authority of his place of domicile or residence, either in writing or orally, in accordance with the law of the latter State.

Arrangements for the translation of the petition, of the certificate provided for in article 8 and of any annexes shall be made by the judicial authority to which the petition is submitted.

2. The judicial authority receiving a petition in accordance with paragraph 1 of this article shall transmit it, together with the certificate provided for in article 8 and any annexes, to the competent judicial authority of the other Contracting Party.

*Chapter III. SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS
AND EXECUTION OF LETTERS ROGATORY*

Article 11. 1. The judicial authorities of the Contracting Parties shall effect the transmittal of documents and of letters rogatory in matters of civil, family and criminal law, through their Ministries of Justice except as otherwise provided in this Convention.

2. The provisions of paragraph 1 of this article shall not preclude the possibility of the Contracting Parties directly delivering, through their diplomatic missions or consular offices, all judicial or extrajudicial documents intended for their own citizens, if the latter are willing to accept them.

Article 12. The application for legal assistance shall contain the following particulars:

- (a) The subject-matter of the application;
- (b) The surnames and given names of the parties, their status in the action, their occupation, domicile or residence and in the case of bodies corporate their name and the place of their head office;
- (c) The surnames, given names and addresses of the representatives of the parties, where appropriate;
- (d) The information necessary for execution of the application. In the case of service of documents there shall be specified, in particular the address of the addressee and, in the case of letters rogatory referring to the taking of evidence, the circumstances concerning which the latter is to take place and, where appropriate, the questions to be put to the persons from whom evidence is to be taken;
- (e) In criminal cases, a description of the offence committed.

Article 13. The judicial authority applied to shall serve the documents received on the addressee in accordance with the legal provisions in force in its own State, where such documents have been drawn up in its language or are accompanied by a certified translation. Otherwise the judicial authority applied to shall serve the documents on the addressee if the latter is willing to accept them.

Article 14. 1. If the address of the person from whom evidence is to be taken or on whom a document is to be served is incomplete or incorrect, the judicial authority applied to shall endeavour, to the best of its ability, to determine the correct address.

2. If the judicial authority applied to is not competent to execute the application, it shall of its own motion transmit the application to the competent authority and shall notify the applicant judicial authority accordingly.

Article 15. To confirm the service of documents, the judicial authority applied to shall draw up a certificate in accordance with the legal provisions in force in its own State.

In all cases this certificate shall specify the date and place of service and the identity of the person on whom the documents have been served.

Article 16. 1. The judicial authority to which letters rogatory are addressed shall execute them, applying the same legal measures as would be applied in the execution of applications for assistance made by the authorities of its own State.

2. At the request of the applicant judicial authority, the judicial authority applied to shall notify the applicant judicial authority or the parties in due time of the place and date of execution of the application for assistance.

Article 17. When an application for legal assistance cannot be executed, the documents shall be returned with a statement of the reasons for which the application could not be executed or was refused.

Article 18. 1. Expenses incurred in executing an application shall not be reimbursed as between the Contracting States, apart from experts' fees and expenses incurred in connection with the taking of expert testimony.

2. The amount and the nature of the expenses incurred shall be communicated to the applicant authority.

Article 19. Legal assistance may be refused if the Contracting Party applied to considers that execution of the application might be prejudicial to the fundamental principles of its legislation, its sovereignty, its security or public policy (*ordre public*).

Chapter IV. PROTECTION OF WITNESSES AND EXPERTS

Article 20. No person of whatsoever nationality who, in response to a summons, appears as a witness or an expert before a judicial authority of the other Contracting Party may be prosecuted, arrested or required to serve a penalty in the territory of that Party for the offence which is the subject of the proceedings in which he was summoned, for another offence committed before he left the territory of the Party applied to, or for a deposition made in such proceedings.

Article 21. The provisions of article 20 of this Convention shall not apply if the witness or expert fails to leave the territory of the applicant Contracting Party within 15 days from the date on which the judicial authority which summoned him informs him that his presence is no longer necessary. Such time-limit shall not include any period during which the witness or expert is unable, for reasons beyond his control, to leave the territory of that Contracting Party.

Chapter V. RECOGNITION AND ENFORCEMENT OF JUDICIAL AND ARBITRAL DECISIONS

Article 22. 1. Each Contracting Party shall recognize and authorize the enforcement in its territory of the following judicial decisions rendered in the territory of the other Contracting Party:

- (a) Final and enforceable decisions rendered by the courts in civil and commercial cases;
- (b) Final and enforceable decisions on civil liability, rendered in criminal cases;
- (c) Settlements arrived at in court in civil and commercial cases.

2. Decisions rendered in matters concerning succession by the authorities of a Contracting Party which, under its law, are competent to consider cases of succes-

sion shall also be considered judicial decisions within the meaning of paragraph 1 of this article.

Article 23. The judicial decisions referred to in the foregoing article shall be recognized and their enforcement shall be authorized under the following conditions:

- (a) If the court of the Contracting Party in whose territory the decision was rendered has jurisdictions under the law of the Contracting Party in whose territory recognition or enforcement of the decision is requested;
- (b) If the judicial decision is final and enforceable under the law of the contracting Party in whose territory it was rendered;
- (c) If recognition or enforcement of the judicial decision would not be prejudicial to the fundamental principles of the legislation or public policy (*ordre public*) of the Contracting Party in whose territory the decision is to be recognized or enforced;
- (d) If no final decision has previously been rendered in the same case between the same parties, on the same subject-matter and on the same grounds, by a competent court of the Contracting Party in whose territory the decision is to be recognized or enforcement is to be effected;
- (e) If a party who did not participate in the proceedings and against whom the decision was rendered or his representative received the summons or a copy of the motion for the suit and accompanying documents in due time, in accordance with the law of the Contracting Party in whose territory the decision was rendered. This provision shall not apply if the summons was made by public notice.

Article 24. 1. An application for authorization of enforcement may be made by the party concerned directly to the competent court of the Contracting Party in whose territory enforcement is to be effected or to the judicial authority which rendered judgement in the case at first instance.

2. The application for authorization of enforcement shall be accompanied by:

- (a) A certified copy of the decision or judicial settlement, as well as a certificate attesting that the decision is final and enforceable, where this is not shown in the decision;
- (b) A certificate attesting that a party who did not participate in the proceedings and against whom the decision was rendered was served with a summons in due time and in accordance with the law of the Contracting Party in whose territory the decision was rendered;
- (c) A certified translation of the documents referred to in subparagraphs (a) and (b) of this paragraph, as well as a translation of the application if it was not drawn up in the language of the Contracting Party in whose territory the decision is to be recognized or enforced.

3. The application for recognition and authorization of enforcement may be accompanied by an application for enforcement of the decision.

Article 25. 1. The courts of the Contracting Party in whose territory the decision is to be enforced shall rule, in accordance with their own law, on the authorization of enforcement, on any objections made and on the enforcement of the decision, except as otherwise provided in this Convention.

2. The court required to rule on the application for recognition and authorization of enforcement shall confine itself to determining whether the conditions provided for in article 23 exist and, where such conditions are present, shall authorize enforcement.

Article 26. Final decisions of one Contracting Party concerning the personal status of its own citizens shall take effect in the territory of the other Contracting Party without any recognition proceedings.

Article 27. 1. If a party in the proceedings, exempted from depositing security for court costs, is required in pursuance of a final decision to pay the legal costs to the other party, the decision shall be enforced free of charge on application of the latter party in the territory of the other Contracting Party.

2. With regard to the recovery of legal costs advanced by the State and of charges from which a party has been exempted, the court of the Contracting Party in whose territory the costs were incurred shall apply to the competent court of the other Contracting Party for recovery of such costs. The sum recovered shall be placed at the disposal of the diplomatic mission or consular office of the other Contracting Party.

3. The applications referred to in paragraph 1 of this article shall be accompanied by a certified copy of the part of the decision referring to the amount of the legal costs, a certificate attesting that the decision is final and a certified translation of these documents.

4. The court authorizing enforcement of the decisions provided for in paragraph 1 of this article shall confine itself to verifying that the decision is final and enforceable.

Article 28. Each Contracting Party shall recognize and authorize enforcement in its territory of arbitral decisions in commercial matters rendered in the territory of the other Contracting Party, in accordance with the Convention on the recognition and enforcement of foreign arbitral awards, adopted at New York on 10 June 1958.¹

Arbitral decisions in civil matters rendered in the territory of one of the Contracting Parties shall be recognized and may be enforced in the territory of the other Contracting Party under the conditions specified in articles 23 and 24 of this Convention, in so far as these conditions are applicable to arbitral decisions.

Article 29. Application of the provisions concerning the enforcement of judicial and arbitral decisions and of judicial settlements may not violate the legal provisions of the Contracting Parties concerning the transfer of sums of money or the transmittal of property obtained through enforcement.

Chapter VI. EXTRADITION

Article 30. The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this chapter, for the purpose of criminal prosecution, trial or the carrying out of a sentence, persons who are in the territory of one of the two Contracting Parties.

¹ United Nations, *Treaty Series*, vol. 330, p. 3.

Extradition shall be granted only if the offence of which the person claimed is accused or has been convicted is considered to be a criminal offence under the law of both Contracting Parties.

Extradition for the purpose of prosecution or trial shall be granted only if, under the law of both Contracting Parties, the offence is punishable by deprivation of liberty for a term exceeding two years, or a more severe penalty, and where extradition is requested with a view to the carrying out of a sentence, only where the sentence entails a term exceeding one year of deprivation of liberty or a more severe sentence.

Article 31. The following may not be extradited:

- (a) Persons who, on the date of receipt of the request for extradition, are citizens of the requested Contracting Party;
- (b) Non-citizens who are domiciled in the territory of the requested Party;
- (c) Persons whose extradition is not allowed under the law of the requested Party.

Article 32. Extradition shall not be granted where:

- (a) The offence was committed in the territory of the requested Party;
- (b) The offence for which extradition is requested has been committed outside the territory of the requesting Party and the law of the requested Party does not provide for prosecution in cases where the offence in question was committed outside its territory, or does not allow extradition for the offences giving rise to the request;
- (c) Under the law of both Contracting Parties, criminal proceedings may be instituted only upon a complaint or upon an information laid by persons so authorized by law;
- (d) Under the law of one of the Contracting Parties, criminal proceedings in respect of the offence for which extradition is requested are barred by lapse of time or amnesty has been granted in respect of the offence, or there exists another legal reason for not instituting criminal proceedings or carrying out the sentence;
- (e) In respect of the person and the offence for which extradition is requested, the judicial authorities of the requested Party have rendered a final decision or have stopped the criminal proceedings.

Article 33. Extradition may be postponed if the person claimed has been accused or indicted in criminal proceedings or is required to serve a sentence entailing deprivation of liberty pronounced by a court of the requested Party.

In case of postponement, extradition may take place only after the completion of the criminal proceedings and, where sentence has been pronounced, only after the sentence has been carried out.

Where the postponement of extradition could result in exemption from prosecution being acquired by lapse of time or could create substantial difficulties for the investigation of the offence, the requested Party may allow temporary extradition on the express condition that the person claimed is returned after completion of the proceedings in the case for which the extradition was granted.

Article 34. A person who has been extradited may not be prosecuted or tried for an offence other than that for which extradition was granted, may not be required

to serve a sentence other than that for which extradition was requested, and may not be extradited to a third State, except in the following cases:

- (a) When the requested Party has consented;
- (b) When that person, having had an opportunity to leave the territory of the requesting Party, has not done so within one month after completion of the criminal proceedings or the carrying out of the sentence or has returned to that territory after leaving it.

Article 35. In matters relating to extradition the two Contracting Parties shall communicate with one another through their Ministries of Foreign Affairs.

Article 36. 1. The request for extradition addressed to the requested Party shall be accompanied by:

- (a) A certified copy of the warrant for arrest and, in the case of extradition for the purpose of the carrying out of a sentence, a certified copy of the final decision. If the warrant for arrest does not mention the offence, specify the place and time of commission, or contain a description of the offence, such particulars shall be certified in an accompanying document;
- (b) A copy of the legal enactments applicable in the case;
- (c) Information concerning the length of the unserved portion of the sentence, in the case of a request for the extradition of a convicted person who has only served a part of the sentence;
- (d) Any information that could facilitate the identification of the person claimed.

2. The requested Party may request supplementary information if the particulars provided under paragraph 1 of this article are incomplete. The other Party shall comply with this request within two months. This time-limit may be extended for a further 15 days by the Contracting Parties where there are substantial reasons for so doing.

If the requesting Party fails to furnish the supplementary information within the specified time-limit, the requested Party may order the release of the arrested person.

Article 37. If the request for extradition fulfills the formal requirements laid down in this Convention, the requested Party shall take immediate steps to arrest the person claimed, except in cases in which extradition can not be granted.

Article 38. A person may be arrested pending receipt of the request for his extradition if the requesting Contracting Party so requests. In such cases reference shall be made to the warrant for arrest or the final decision rendered in respect of the person claimed, and it shall be stated that the request for extradition will be transmitted later. An application for an arrest, pending receipt of the request for extradition, may be made by post, telegraph, telephone or radio.

The other Contracting Party shall be notified immediately of an arrest made in accordance with the provisions of this article.

A provisional arrest in accordance with the provisions of this article may not exceed one month, but may be extended for a further 15 days upon a request by the requesting Party, with a statement of the reasons therefor.

Article 39. The requested Party shall inform the requesting Party of its decision with regard to the extradition.

If the request for extradition is granted, the requested Party shall be required to inform the requesting Party of the place and date of surrender of the person concerned.

If the representative of the requesting Party does not appear on the date and at the place specified to take over the person whose extradition has been granted, and if no postponement has been requested, the arrested person shall be released. In such case, if the request for extradition is repeated, it may be refused. The postponement provided for in this article may not exceed 15 days.

Article 40. If requests for the extradition of the same person are received from more than one State, the requested Party shall decide to which State the person claimed shall be extradited.

Article 41. An extradited person who evades prosecution or the carrying out of the sentence or who fails to appear for trial and returns to the territory of the requested Party may be re-extradited. In such case, the documents referred to in article 36 of this Convention need not accompany the request.

Article 42. At the request of the requesting Party, the requested Party shall hand over:

- (a) Property which may be required as evidence in the criminal proceedings; such property shall be handed over even in cases where extradition cannot take place by reason of death, evasion or other circumstances;
- (b) Property acquired through or used in the commission of the offences.

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

If the property requested is needed by the requested Party in a criminal case, it may be retained temporarily or handed over on condition that it is returned. The rights of the requested Party or third parties in such property shall be preserved. The property to which such rights exist shall be returned to the requested Party as soon as possible.

The delivery of sums of money or other property shall be effected in accordance with the law of the requested Party.

Article 43. Expenses incurred by reason of extradition up to the time of surrender of the person extradited shall be borne by the Contracting Party in whose territory they were incurred.

Article 44. Each Contracting Party shall authorize, upon request, transit through its territory of persons extradited to the other Contracting Party by a third State.

Requests for authorization of such transit shall be transmitted and dealt with in accordance with the procedure provided for in this Convention concerning requests for extradition.

The Contracting Parties shall not be required to authorize transit of persons whose extradition may not take place under this Convention.

Expenses occasioned by transit shall be borne by the requesting Party.

Article 45. The Contracting Parties shall inform each other of the results of criminal proceedings instituted against extradited persons. If a final judgement has been pronounced against such persons, a copy of the judgement shall be transmitted.

Article 46. 1. Each Contracting Party undertakes at the request of the other Contracting Party to institute, in accordance with its own law, criminal proceedings against one of its citizens where there is sufficient evidence that he has committed an extraditable offence in the territory of the other Contracting Party.

2. The request shall be accompanied by a document containing particulars concerning the identity of the person accused and the circumstances concerning the place and time of commission of the offence, as well as an extract from the text of the penal laws applicable to the offence.

All available evidence relating to the commission of the offence shall likewise be annexed.

The documents referred to in the foregoing paragraph shall be accompanied by certified translations in the language of the requested Contracting Party.

3. Where the contents of the documents referred to in paragraph 2 above are insufficient for the determination of the *de facto* situation or the guilt of the accused person, the requested Contracting Party may request any other evidence needed for the purpose.

4. The requested Contracting Party shall be required to inform the requesting Contracting Party of the results of the criminal proceedings.

5. For the purpose of applying the provisions of this article, the Contracting Parties shall communicate with one another through their General Procurators' Offices.

Chapter VII. EXCHANGE OF INFORMATION IN CRIMINAL MATTERS

Article 47. Each Contracting Party shall communicate to the other Contracting Party information concerning final judgements rendered by the courts of one Contracting Party against citizens of the other Contracting Party, transmitting at the same time the fingerprints of convicted persons.

Article 48. At the request of the courts or criminal prosecution organs of the other Contracting Party, information shall be transmitted free of charge concerning any previous convictions of persons prosecuted or tried in the territory of that Contracting Party. Such communication shall take place in accordance with article 3 of this Convention.

Chapter VIII. FINAL PROVISIONS

Article 49. 1. This Convention shall be subject to ratification. The exchange of the instruments of ratification shall take place at Havana as soon as possible.

2. The Convention shall enter into force 60 days after the exchange of the instruments of ratification.

3. This Convention is concluded for an indefinite period.

Either Contracting Party may denounce the agreement by giving written notice of denunciation to the other Contracting Party and the denunciation shall take effect one year after the date of receipt of such notification.

DONE at Bucharest on 28 June 1980, in two original copies, in the Romanian and Spanish languages, both texts being equally authentic.

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

For the Socialist Republic
of Romania:

[STEFAN ANDREI]

For the Republic
of Cuba:

[ISIDORO MALMIERCA PEOLI]
