

No. 21981

**FEDERAL REPUBLIC OF GERMANY
and
ISRAEL**

Agreement supplementing the European Convention on mutual assistance in criminal matters of 20 April 1959 and facilitating its implementation. Signed at Jerusalem on 20 July 1977

Authentic texts: German and Hebrew.

Registered by the Federal Republic of Germany on 28 June 1983.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
ISRAËL**

Accord visant à compléter la Convention européenne d'entraide judiciaire en matière pénale du 20 avril 1959 et à faciliter son application. Signé à Jérusalem le 20 juillet 1977

Textes authentiques : allemand et hébreu.

Enregistré par la République fédérale d'Allemagne le 28 juin 1983.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE STATE OF ISRAEL SUPPLEMENTING THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS OF 20 APRIL 1959² AND FACILITATING ITS IMPLEMENTATION

The Federal Republic of Germany and the State of Israel,

Desiring to facilitate the implementation of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959² and to supplement the regulation provided for in that Convention for legal assistance in criminal matters,

Have agreed as follows:

Article I. In this Agreement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 shall be referred to as "the Convention".

Article II (Ad article 1 of the Convention). The obligation to afford legal assistance under article 1 of the Convention shall also exist, provided that it is compatible with the law of the requested State:

- (a) In proceedings arising from actions which under the law of either or both of the States are punishable only by an administrative fine, provided that in at least one of the two States the matter may be brought before a court which is competent in criminal matters as well;
- (b) In proceedings concerning claims to compensation arising from wrongful criminal prosecution;
- (c) In matters of clemency;
- (d) In connection with requests for the service of orders to begin serving a sentence or to pay a criminal or administrative fine and of decisions relating to the cost of proceedings, if the time-limit for the beginning of execution is at least 60 days after service;
- (e) In civil claims connected with a criminal charge, provided that the court competent for criminal matters has not yet rendered a final decision in the criminal matter.

Article III (Ad article 2 of the Convention). In the cases referred to in article 2 (b) of the Convention, the legal assistance shall, in so far as possible, be granted subject to stipulations or conditions where it is possible thereby to avoid harming the interests of the requested State.

Article IV (Ad article 3 of the Convention). (1) The objects referred to in article 3, paragraph 1, of the Convention may be delivered only if an order for their seizure has been issued by the competent judicial authority of the requesting State. However, objects which are not subject to seizure under the law of the requested State shall not be delivered.

¹ Came into force on 6 March 1981, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 6 February 1981, in accordance with article XX (2).

² United Nations, *Treaty Series*, vol. 472, p. 185.

(2) The rights of third persons and, without prejudice to paragraph (3), of the requested State to the objects to be delivered under article 3 of the Convention or under this Agreement shall not be affected.

(3) Where objects acquired through the commission of an offence, or money obtained through the sale of such objects, have been brought into the territory of one of the Contracting Parties in violation of customs or tax provisions, the State requested to deliver them shall not, at the time of delivery of the objects to the requesting State, assert any right to seizure in lieu of customs duties or any other *ad rem* claim under the provisions of its customs or tax law. The foregoing shall not apply if the owner of the objects, who has suffered damage as a result of the offence, himself owes the taxes.

Article V (Ad article 4 of the Convention). (1) The presence of interested authorities and persons when the legal-assistance procedures in the requested State are carried out may also be permitted when, although the law of that State does not provide for the presence of such authorities and persons during investigative procedures, their presence is permissible under the domestic regulations of the requested State.

(2) The interested authorities and persons present when the legal-assistance procedures are carried out may raise questions or request actions which relate to the legal-assistance procedures.

(3) The judicial authorities of the requested State may require interested persons to be represented by a lawyer authorized to act in the requested State if they wish to raise questions or request actions.

Article VI (Ad article 5 of the Convention). The granting of a request for legal assistance consisting in the delivery of evidence, in conducting a search or in the seizure of objects shall not depend on the extraditability in the requested State of the offence on which the request is based.

Article VII (Ad article 7 of the Convention). Save in especially urgent cases, requests for the service of a summons must be delivered to the judicial authority of the requested State which is to effect the service at least 40 days before the time fixed for the appearance of the summoned person.

Article VIII (Ad article 10 of the Convention). Article 10, paragraphs 2 and 3, of the Convention shall, in any case, apply to the summoning of a witness or expert, even when the requirements of article 10, paragraph 1 of the Convention are not met.

Article IX (Ad article 11 of the Convention). (1) The requested State may agree to allow a person in custody in the territory of the requesting State to be present when the legal-assistance procedures are carried out. If the requested State gives its consent, its competent authorities must keep the said person in custody for the duration of his stay in the territory of the requested State, or otherwise secure him, in order that he may be returned to the territory of the requesting State. After the legal-assistance procedures are carried out, the said person shall, irrespective of his nationality be returned without delay to the requesting State unless that State desires his release.

(2) Article 12 of the Convention shall apply, *mutatis mutandis*, to the cases referred to in paragraph (1).

Article X (Ad article 14 of the Convention). (1) In addition to the information provided for in article 14, paragraph 1, of the Convention:

- (a) In requests for interrogation, the questions to be put to the person to be interrogated must be stated in numerical order, as precisely as possible;
- (b) In requests for the service of documents pertaining to proceedings and of judicial decisions, the nature of the document to be served and the position of the recipient in the proceedings must be indicated.

(2) Requests made by telephone or telegraph must be confirmed in writing.

(3) Where, in urgent cases, at the initiative of judicial authorities, requests for legal assistance are submitted by the Federal Criminal Investigation Department of the Federal Republic of Germany (Interpol Wiesbaden) or by the Chief of the Criminal Police, Israel Police, National Headquarters, Jerusalem, the information furnished shall, in addition to the information provided for in article 14, paragraph 1, of the Convention and in paragraph (1) above, also include the instructions of the judicial authority, together with the reference number.

Article XI (Ad article 15 of the Convention). (1) Except as otherwise specified in this Agreement, the Ministries of Justice of the *Länder (Landesjustizverwaltungen)* of the Federal Republic of Germany and the Director of Courts, Administration of Courts, Jerusalem, may communicate with each other direct. In urgent cases, duplicates of the requests may simultaneously be transmitted by a judicial authority of the requesting State to the competent judicial authority of the requested State with a view to the preparation of the legal-assistance procedures.

(2) Requests from administrative authorities which are prosecuting offences within the meaning of article II (a) shall be transmitted in the manner provided for in paragraph (1) above.

(3) Requests for the transmittal of information or extracts from criminal records for the purposes of criminal justice, including the deletion of entries in the criminal records, may be addressed direct to the competent criminal-records authorities of the Contracting Parties.

(4) In the cases referred to in article 13, paragraph 2, of the Convention, correspondence shall be conducted between the Federal Minister of Justice of the Federal Republic of Germany and the Minister of Justice of the State of Israel.

(5) Subject to the domestic regulations in force, legal-assistance procedures in criminal cases in which the police is involved and in which only information, personal identifications, interrogations by the police or searches are required may be carried out direct between the Federal Criminal Investigation Department of the Federal Republic of Germany (Interpol Wiesbaden) and the Chief of the Criminal Police, Israel Police, National Headquarters, Jerusalem.

Article XII (Ad articles 16 and 17 of the Convention). (1) Requests and all annexed and subsequent documents shall be written in the language of the requesting State. Translations into English or into one of the official languages of the requested State shall be annexed thereto. Documents issued in granting a request for legal assistance need not be accompanied by a translation into English or into one of the official languages of the requesting State unless that State bears the cost of the translation.

(2) Documents transmitted pursuant to the Convention and to this Agreement shall not require any form of certification or authentication.

Article XIII (Ad article 20 of the Convention). Costs arising from the delivery of an object pursuant to article IV, paragraph (1), shall be reimbursed by the requesting State.

Article XIV (Ad article 21 of the Convention). (1) Where either State requests the other to prosecute a national of the latter State, or a person who has his customary residence in that State, for an offence committed in the territory of the requesting State and where an application for prosecution is required only under the law of the requested State, it may be transmitted within the statutory time-limit. The time-limit shall begin to run upon receipt of the request by the requested State's authority competent for the prosecution.

(2) The request shall be accompanied by:

- (a) The documents pertaining to the proceedings, in the form of an original text or a certified copy, a statement of the substance of the case and any necessary physical evidence, as well as
- (b) A copy of the criminal provisions applicable to the offence under the law in force at the place where it was committed.

(3) The requesting State shall be informed as soon as possible of the action taken on the basis of the request. Any objects which have been delivered and any documents pertaining to the proceedings which have been transmitted in the form of an original text shall be returned free of charge to the requesting State after the conclusion of the proceedings unless the latter waives its right thereto.

(4) Where prosecution has been initiated in the requested State, the authorities of the requesting State shall refrain from any further measures of prosecution or execution against the accused for the same act. They may, however, continue or resume the prosecution or execution if:

- (a) The requested State informs them that it cannot complete the criminal proceedings, in particular because the accused has evaded prosecution or execution of the penalty in the requested State, or that it has completed the criminal proceedings but has taken no decision concerning the substance of the criminal act on which the request is based;
- (b) For reasons which have become known subsequently, before the adoption of any judicial punitive measures, the issuance of a judicial order for punishment or the imposition of an administrative fine, or before the beginning of the trial of the case in first instance, the requesting authority has retracted the request for prosecution.

(5) Costs arising out of the application of this article shall not be reimbursed.

Article XV (Ad article 22 of the Convention). (1) Information concerning convictions and subsequent measures shall be exchanged at least once every six months between the Federal Minister of Justice of the Federal Republic of Germany and the Minister of Police of the State of Israel.

(2) Each State shall transmit to the other, upon request, copies of judicial findings in criminal cases in order to enable the requesting State to determine whether domestic measures should be adopted on the basis of the decisions asked for. Correspondence relating thereto shall be conducted between the Federal

Minister of Justice of the Federal Republic of Germany and the Minister of Justice of the State of Israel.

(3) Either Contracting Party may, instead of the authorities referred to in paragraphs (1) and (2), designate another authority to the other Contracting Party as the competent authority.

Article XVI. Prosecution in respect of an offence committed in the territory of one Contracting Party shall also be permissible in the territory of the other Contracting Party if the substance of the case is regarded in the latter State as an infraction or an offence within the meaning of article II (a).

Article XVII. The question whether the statute of limitations has run in respect of the offence on which a request for legal assistance is based shall be decided in accordance with the law of the requesting State. The foregoing shall not apply to requests under article 21 of the Convention and article XIV of this Agreement.

Article XVIII (Ad article 25 of the Convention). This Agreement shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany makes a declaration to the contrary to the Government of the State of Israel within three months after the entry into force of the Agreement.

Article XIX (Ad article 29 of the Convention). If either of the Contracting Parties denounces the Agreement, the denunciation shall take effect in respect of the relations between the Contracting Parties after the expiry of a period of two years after the notice of denunciation is received by the office of the Secretary-General of the Council of Europe.

Article XX. (1) This Agreement must be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) This Agreement shall enter into force one month after the exchange of the instruments of ratification, provided that at that time the Convention is binding on both Parties to this Agreement; otherwise it shall enter into force at the same time as the Convention.

(3) This Agreement may be denounced in writing at any time; it shall cease to have effect six months after denunciation. It shall also cease to have effect without specific denunciation at such time as the Convention ceases to have effect between the Parties to this Agreement.

DONE at Jerusalem on 20 July 1977, in duplicate in the German and Hebrew languages, both texts being equally authentic.

For the Federal Republic of Germany:
PER FISCHER

For the State of Israel:
M. DAYAN