

No. 21587

**POLAND
and
AUSTRIA**

**Treaty on legal assistance in criminal matters. Signed at
Vienna on 27 February 1978**

Authentic texts: Polish and German.

Registered by Poland on 28 January 1983.

**POLOGNE
et
AUTRICHE**

**Traité d'entraide judiciaire en matière pénale. Signé à Vienne
le 27 février 1978**

Textes authentiques : polonais et allemand.

Enregistré par la Pologne le 28 janvier 1983.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE POLISH PEOPLE'S REPUBLIC AND THE
REPUBLIC OF AUSTRIA ON LEGAL ASSISTANCE IN CRIMINAL
MATTERS

The Council of State of the Polish People's Republic and the Federal President of the Republic of Austria,

Guided by the desire to facilitate legal relations between the two States, have agreed to conclude a Treaty on legal assistance in criminal matters and for that purpose have appointed as their plenipotentiaries:

The Council of State of the Polish People's Republic:

Professor Jerzy Bafia, Minister of Justice;

The Federal President of the Republic of Austria:

Dr. Christian Broda, Federal Minister of Justice;

who, having exchanged their full powers, found in good and due form, have agreed as follows:

PART I. LEGAL ASSISTANCE

Article 1. The Contracting States undertake, at the request of a court or State prosecutor's office, in accordance with the provisions of this Treaty, to render one another legal assistance in proceedings concerning acts punishable by a court of law.

Article 2. (1) The legal assistance shall include, in particular, questioning of accused persons, witnesses and experts, inspection, search, seizure of objects, transmission of records, documents or other objects relevant to a criminal act, and the serving of documents.

(2) Legal assistance shall also be rendered in matters relating to clemency and in proceedings concerning claims for compensation for unjustified detention or unjustified conviction.

(3) Legal assistance shall not be rendered for the enforcement of sentences or of other decisions.

Article 3. (1) Legal assistance shall not be rendered if:

1. The act on which the request is based is not punishable by a court of law under the law of the requested State;
2. Compliance with the request could impair the sovereignty of the requested State, endanger its security or contravene principles of its legal system; or
3. The act on which the request is based is, in the opinion of the requested State, an offence of a political nature or a military offence.

¹ Came into force on 1 May 1980, i.e., the first day of the third month following the exchange of the instruments of ratification, which took place at Warsaw on 26 February 1980, in accordance with article 27 (1) and (2).

(2) Legal assistance shall not be rendered in respect of an act which, in the opinion of the requested State, constitutes exclusively a violation of tax, monopoly or currency regulations or of goods-control or foreign-trade regulations (fiscal offences). However, legal assistance shall be rendered, in accordance with article 4 and other provisions of this Treaty, in respect of a fiscal offence which, in the opinion of the requested State, constitutes exclusively a violation of customs regulations.

Article 4. (1) Customs regulations within the meaning of article 3 (2), second sentence, are legal regulations governing the import, export, transit and storage of goods and relating to customs duties or other import or export taxes.

(2) Such legal assistance shall be rendered regardless of whether a similar customs regulation exists in the requested State.

(3) Documents and information received by a court or State prosecutor's office of the requesting State in connection with a request for legal assistance in a customs offence may be used not only in the proceedings for which the legal assistance was requested but also in customs and other taxation proceedings directly related to those proceedings.

Article 5. (1) The request for legal assistance shall be made in writing and shall include the designation of the requesting and of the requested authority, the reference symbol of the case, a brief description of the offence indicating the time and place of its commission, the legal definition of the offence, information in the greatest detail possible concerning the accused person, his nationality and domicile or abode, the name and address of his defence counsel if any, the subject-matter of the request and any additional details needed in order to comply with it. Requests for the interrogation of persons must indicate the questions to be asked.

(2) Requests for legal assistance shall be signed by the competent judge or State prosecutor and shall bear the official seal of the requesting authority. They shall not require authentication.

(3) Requests for the searching of persons or premises or the seizure of property shall be accompanied by an original or an authenticated copy of the order issued by the requesting authority.

Article 6. In the execution of requests for legal assistance the law of the requested State shall be applied. However, procedural rules of the requesting State differing therefrom shall be applied if so desired by the requesting State provided that they are compatible with the principles of procedural law of the requested State.

Article 7. (1) If so desired by the requesting authority, it shall be notified in good time by the requested authority of the time and place of execution of the request for legal assistance. Such notification shall be effected by direct communication between the requesting and the requested authority.

(2) Persons participating in the criminal proceedings and their legal counsel as well as representatives of authorities participating in the criminal proceedings may be present when action in respect of legal assistance is taken in the requested State, provided that this is compatible with the principles of the procedural law of the requested State. They may suggest additional questions. Article 11, paragraphs 3 and 4, shall apply *mutatis mutandis* to all such persons.

(3) The presence of the representatives of the requesting State's authorities referred to in paragraph 2, during action in the requested State in respect of legal assistance, shall require the authorization of the Ministry of Justice or of the Office of

the General State Prosecutor in the Polish People's Republic, or of the Federal Minister of Justice in the Republic of Austria.

Article 8. (1) If the address given of a person to whom the action in respect of legal assistance is to apply is not precise or proves to be incorrect, the requested authority shall, if possible, ascertain the correct address as far as possible.

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

Article 9. (1) A Contracting State shall, at the request of the other Contracting State, transmit records, documents or other papers that may serve as evidence for criminal proceedings in the requesting State. Documents and other objects shall be transmitted even when this calls for seizure or confiscation in the requested State.

(2) Transmittal of original records or documents shall be required only when the transmittal of copies will not suffice.

(3) The requested State may retain records, documents or other objects required for criminal proceedings in that State, for the duration of such proceedings.

(4) Existing rights of the requested State or of third parties to the documents or objects transmitted remain unaffected. Transmitted records, documents or objects shall be returned to the requested State as soon as possible, unless the latter waives their return.

(5) Provisions limiting the import and export of goods and currencies shall not apply to the transmission of records, documents and other objects under this article.

Article 10. Evidence that service has been effected shall be in the form of a proof of service certificate which must be dated and signed by both the process-serving authority and the recipient, or in the form of a confirmation by the requested authority indicating the fact, the manner and the time of service.

Article 11. (1) If it proves necessary for a person in one of the Contracting States to appear personally before a court or State prosecutor's office of the other Contracting State in order to be heard as a witness or expert, such person shall be served with a summons by the competent authority of the requested State.

(2) The summons may not contain any threat of coercive measures in case of non-appearance. If the witness or expert fails to comply with the summons, he may not be subjected to the consequences provided by law for such failure.

(3) A witness or expert, of whatever nationality, who, being in the territory of one of the Contracting States, receives a summons to appear before a court or State prosecutor's office of the other Contracting State and complies with it may be neither prosecuted nor detained nor otherwise subjected to restriction of his personal freedom in the territory of the latter Contracting State for an act committed prior to his entry into that territory or for any other reason antedating such entry.

(4) The witness or expert shall forfeit that protection, however, if he remains in the territory of the Contracting State before whose court or State prosecutor's office he was summoned, for more than 15 days after the court or State prosecutor's office stated that his presence was no longer required although he could have left that territory during that period, or if he returns to that territory after having left it.

(5) The summons shall indicate in detail the entitlements of the witness or expert to reimbursement of travel and subsistence costs, compensation for loss of time and, in the case of an expert, remuneration for the services rendered. The requesting State shall provide a summoned witness or expert, at his request, with an advance to cover travel and subsistence costs.

Article 12. (1) If a person summoned as a witness is under detention in the requested State by order of a court or State prosecutor's office, he shall, if the requesting State so desires and he agrees, be transferred to that State for hearing, provided that there are no compelling grounds for not doing so.

(2) The witness shall remain in detention in the requesting State and shall immediately be returned to the requested State after having been heard.

Article 13. (1) An accused person, of whatever nationality, who, being in the territory of one of the Contracting States, receives a summons to appear before a court or State prosecutor's office of the other Contracting State and complies with it, may be neither prosecuted nor detained, nor otherwise subjected to restriction of his personal freedom in the territory of the latter Contracting State for an act which was committed prior to his entry into that territory and to which the summons does not refer, or for any other reason antedating such entry.

(2) The summons may not contain any threat of coercive measures in case of non-appearance. Coercive measures designed to cause the accused person to appear in person in the requesting State are not permissible.

(3) The summoning of accused persons is also governed, *mutatis mutandis*, by the provisions of article 11, paragraphs 1 and 4.

Article 14. The competent authorities of the requested State shall if necessary employ the same coercive measures in complying with requests for legal assistance as they do in complying with requests for legal assistance from competent authorities of their own State.

Article 15. If legal assistance is wholly or partially not granted, or if there are obstacles to compliance with the request, the requesting authorities shall be notified thereof and informed of the reasons.

PART II. TAKEOVER OF CRIMINAL PROSECUTION

Article 16. (1) If a national of one of the contracting States has committed an offence in the territory of the other contracting State which is punishable by a court of law in both contracting States, the State in which the offence was committed may request the other contracting State to take over prosecution for that offence. The competent authorities of the requested State shall conduct the criminal proceedings in accordance with the law of that State.

(2) The competent authorities of the State in which the offence was committed shall examine, in the particular case concerned, whether the submission of a request of the kind referred to in paragraph 1 is called for in the interests of fact-finding, for reasons of assessment of penalty or other reasons important for the criminal proceedings, for reasons of execution of sentence or in the interests of the social rehabilitation of the accused.

(3) Traffic offences shall be judged in the requested State on the basis of the traffic regulations in force at the place where the offence was committed.

Article 17. The courts and State prosecutor's offices of the requesting State shall take the necessary measures, in connection with the request for takeover of criminal prosecution, to enable the requested State to exercise its jurisdiction.

Article 18. (1) The request for takeover of criminal prosecution shall contain a description of the facts of the case and the most detailed information possible concerning the accused person, his nationality and his domicile or abode. The request shall be accompanied by:

- (a) Originals or authenticated copies of the records along with the exhibits pertaining to the case;
- (b) The provisions defining the offence and the penalty applicable thereto under the *lex loci* and, in the case of a traffic offence, the traffic regulations on the basis of which it is to be judged;
- (c) Statements of the party injured by the offence, needed for the institution of criminal proceedings, and at the request of the injured party, any statements that have a bearing, in the criminal proceedings, on the validity of his civil-law claims resulting from the offence.

(2) Article 9, paragraphs 4 and 5, shall apply in respect of the transmittal of records and exhibits.

Article 19. In view of the request for takeover of criminal prosecution, the courts and State prosecutor's offices of the requesting State shall temporarily desist from measures of prosecution for the offence covered by the request; they shall permanently desist from such measures:

- (a) If the sentence has been served in the requested State or is deemed to have been served in accordance with the law of that State or if the serving of the sentence is barred under the statute of limitations of the requested State or if the sentence is remitted in the requested State;
- (b) If a final acquittal has been pronounced or proceedings have been definitively suspended in the requested State for lack of evidence or because the act committed does not constitute a punishable offence or if criminal proceedings have been definitely dropped because the accused has completed a term of probation.

Article 20. The requested State shall inform the requesting State of the results of the criminal proceedings. Where they result in a final decision, an original or authenticated copy thereof shall be transmitted at the request of the requesting State.

PART III. LEGAL INFORMATION

Article 21. The Ministry of Justice or the Office of the State Prosecutor-General of the Polish People's Republic and the Federal Minister of Justice of the Republic of Austria shall provide one another, upon request, with information on their penal law, law of criminal procedure and law of sentence execution.

PART IV. INFORMATION FROM THE PENAL REGISTER

Article 22. (1) Each Contracting State shall inform the other, once a year, of all convictions by its criminal courts of nationals of the other Contracting State which have been entered in its penal register. Such extracts from the penal register shall be

exchanged between the Ministry of Justice of the Polish People's Republic and the Federal Minister of Justice of the Republic of Austria.

(2) The Contracting States shall provide one another, upon request, with information from the penal register concerning persons against whom criminal proceedings are pending in the requesting State. Such information may be used only for the purposes of those criminal proceedings. There is no obligation to provide information concerning nationals of the requested State.

PART V. GENERAL PROVISIONS

Article 23. In the matters governed by this Treaty, the correspondence shall proceed between the Ministry of Justice or the Office of the State Prosecutor-General of the Polish People's Republic on the one hand and the Federal Minister of Justice of the Republic of Austria on the other. The courts and State prosecutor's offices of the two contracting States shall communicate with one another through the same channels, unless otherwise provided in this Treaty.

Article 24. (1) Requests made pursuant to this Treaty and relevant enclosures shall be subject to the provisions of paragraph (2), and shall not be accompanied by translations, unless in a particular case they are deemed advisable by the court or State prosecutor's office making the request for legal assistance.

(2) Documents to be served shall be accompanied by a translation into the language of the requested State and made and authenticated by a sworn translator domiciled in one of the contracting States. Authentication of the signature and seal of the translator is not necessary.

Article 25. Costs arising from the compliance with requests shall be borne by the requested State.

Article 26. This Treaty does not affect the provisions of other treaties or agreements binding upon either or both of the Contracting States at the time of its entry into force.

PART VI. FINAL PROVISIONS

Article 27. (1) This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Warsaw.

(2) The Treaty shall enter into force on the first day of the third month following the month during which the instruments of ratification are exchanged.

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

(4) If the Treaty has not been terminated in accordance with paragraph (3), 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 Vienna, on 27 February 1978, in two original copies in the Polish and German languages, both texts being equally authentic.

For the Council of State
of the Polish People's Republic:
[Prof. JERZY BAFIA]

For the Federal President
of the Republic of Austria:
[Dr. CHRISTIAN BRODA]
