

No. 23127

**ISRAEL
and
AUSTRIA**

Agreement to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and to facilitate its application. Signed at Jerusalem on 21 July 1975

Authentic texts: Hebrew and German.

Registered by Israel on 31 October 1984.

**ISRAËL
et
AUTRICHE**

Accord destiné à compléter la Convention européenne d'entraide judiciaire en matière pénale du 20 avril 1959 et à en faciliter l'application. Signé à Jérusalem le 21 juillet 1975

Textes authentiques : hébreu et allemand.

Enregistré par Israël le 31 octobre 1984.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE STATE OF ISRAEL AND THE REPUBLIC OF AUSTRIA TO SUPPLEMENT THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS OF 20 APRIL 1959² AND TO FACILITATE ITS APPLICATION

The State of Israel and the Republic of Austria, desiring to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959,² hereinafter referred to as “the Convention”, in relations between the two States and to facilitate the application of the principles contained therein, have agreed as follows:

*Article I**(Ad article 1 of the Convention)*

The Convention and this Agreement shall also be applicable:

- (a) In proceedings relating to suspension or interruption of sentences and conditional suspension of the execution of a sentence or of preventive measures;
- (b) In proceedings concerning claims for compensation for wrongful prosecution;
- (c) In matters relating to pardons;
- (d) By service of a summons requiring the recipient to begin serving a sentence, to pay a judicial or administrative fine or to pay legal costs in criminal matters, and service of decisions relating to such legal costs, provided that the action in question shall not be taken before the expiry of 60 days after service;
- (e) In claims under private law which are asserted in the course of criminal proceedings, provided that the court competent to hear criminal matters has not yet rendered a final judgement in the criminal case.

*Article II**(Ad article 3, paragraph 1, and article 6 of the Convention)*

- (1) The articles referred to in article 3, paragraph 1, of the Convention shall be produced only if a seizure order has been issued by the competent legal authorities of the requesting State. However, articles which under the law of the requested State are not subject to seizure shall not be produced.
- (2) The rights of third parties and, without prejudice to paragraph (4), of the requested State to the articles or documents to be transmitted under article 3 of the Convention or under this Agreement shall not be affected.
- (3) In the decision concerning the waiver of return of property referred to in article 6, paragraph 2, of the Convention, account shall be taken of whether a person who did not participate in the commission of the offence furnishes satisfactory evidence that he has in good faith acquired rights to the property in one of the two States and whether his claim has been satisfied or secured.

¹ Came into force on 23 May 1982, i.e., one month after the exchange of the instruments of ratification, which took place at Vienna on 23 April 1982, in accordance with article XVI (2).

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

(4) Customs liens and other *ad rem* claims under the provisions of customs or tax law shall not be asserted by the requested State when transmitting property whose return has been waived, unless the owner of the property, being the injured party in respect of the offence, is himself liable for payment.

Article III

(Ad article 3, paragraph 2, of the Convention)

In granting a request from a judicial authority for the examination of a person in the requested State about a criminal offence of which he stands accused or to which he is suspected of being an accomplice or accessory, the judicial authorities of the requested State shall give due consideration to taking unsworn evidence from such a person pursuant to the provisions of the regulations in force in the requesting State and at the express request of that State's judicial authorities, provided that the person in question is willing to give such testimony.

Article IV

(Ad article 4 of the Convention)

(1) The presence of representatives of the competent authorities or of persons having an interest in the criminal proceedings or their representatives when measures of legal assistance are executed in the requested State shall be permitted on request, in so far as such presence is permissible under the regulations of the requesting State. Persons whose presence at legal-assistance procedures has been permitted may raise further questions or propose further measures relating to the legal-assistance procedure.

(2) In the implementation of paragraph (1) the presence of representatives of the competent Israeli authorities shall require the consent of the Federal Minister of Justice, and the presence of representatives of the competent Austrian authorities shall require the consent of the Minister of Justice of the State of Israel.

(3) The judicial authorities of the requested State may require that persons having an interest in the proceedings should be represented by a lawyer licensed to practise in the requested State if they wish to raise questions or propose measures.

Article V

(Ad article 5 of the Convention)

It shall not be a prerequisite for the execution of a legal-assistance request for the transmittal of evidence, for searches or for the seizure of articles that the offence forming the basis of the request should be extraditable.

Article VI

(Ad article 7 of the Convention)

Except in especially urgent cases, summonses must have been received not later than 40 days before the prescribed time for the summoned person's appearance by that judicial authority of the requested State which is to apply the summons.

Article VII

(Ad article 10 of the Convention)

Article 10, paragraphs 2 and 3, of the Convention shall apply to all cases in which a witness or expert is summoned, even where the conditions of article 10, paragraph 1, of the Convention are not met.

Article VIII

(Ad articles 11 and 12 of the Convention)

(1) If either State requests that a person in custody in its territory should be present when a request for legal assistance is executed in the other State, the request for the said person's presence may be granted.

(2) The State to which the person in custody is transferred pursuant to paragraph (1) shall keep him in custody for the duration of his stay. It may not prosecute him for any act committed prior to his transfer.

Article IX

(Ad article 14 of the Convention)

(1) In requests for hearings, the questions to be put to witnesses shall be stated in numerical order as precisely as possible.

(2) Requests for service shall, in indicating the object of and the reason for the request, also specify the nature of the document to be served and the status of the recipient in the proceedings.

(3) Where, in cases in which delay would be dangerous, a request for an investigation is made at the suggestion of a judicial authority by the Federal Minister of the Interior of the Republic of Austria or by the Chief of Criminal Police, Israel Police, National Headquarters, Jerusalem, the order of the judicial authority and the reference number must be supplied in addition to the required particulars.

(4) Requests submitted by telephone or telegraph must be confirmed in writing.

Article X

(Ad article 15 of the Convention)

(1) Save as otherwise provided in this Agreement, papers and documents to be transmitted, delivered or submitted in implementation of the Convention and of this Agreement shall be transmitted for the Republic of Austria through the Federal Minister of Justice and for the State of Israel through the Director of Courts, Jerusalem.

(2) Requests for the transmittal of information or of extracts from judicial records needed in a criminal matter shall be addressed, respectively, direct to the Judicial Records Office of Federal Police Headquarters at Vienna and to the Criminal Investigation Department, Police Headquarters, Jerusalem. Either Contracting State may, in the event of a change in its internal regulations relating to competence, inform the other Contracting State that it designates another authority as competent instead of the above-mentioned authorities.

(3) Within the limits of the respective internal regulations, in criminal matters which are of concern to the security authorities and in which only information, interrogation by security authorities, personal identification or search measures are required, communication may be carried on direct between the Federal Minister of the Interior of the Republic of Austria and the Chief of Criminal Police, Israel Police, National Headquarters, Jerusalem.

Article XI

(Ad articles 16 and 17 of the Convention)

(1) Papers and documents which are transmitted, delivered or submitted in implementation of the Convention and of this Agreement and which are not drawn up in the English

language shall be accompanied by a translation into that language. However, such a translation of papers produced in response to a request for legal assistance, if it entails substantial expense, shall accompany the papers only if the expense is borne by the requesting State.

(2) The papers and documents referred to in paragraph (1) shall require no authentication of any kind.

Article XII

(Ad article 20 of the Convention)

Costs arising out of the delivery of an article pursuant to article II shall be reimbursed by the requesting State on demand.

Article XIII

(Ad article 21 of the Convention)

(1) On the basis of information laid by one Contracting State pursuant to article 21 of the Convention, the competent authorities of the other Contracting State shall determine whether criminal proceedings are to be instituted against a person under the law of the latter State.

(2) If an application for prosecution (*Strafantrag, bakashat ikuvim p'liliim*) is required only under the law of the requested State, it may be submitted within the period prescribed by law. The period shall commence when the request is received by the authority competent for prosecution in the requested State.

(3) The information shall be accompanied by:

- (a) The originals or authenticated copies of the documents involved or of the relevant extracts therefrom, together with any evidentiary material,
- (b) A copy of the penal provisions applicable to the offence under the law of the place where the offence was committed.

(4) The requested State shall inform the requesting State as soon as possible of the action taken on the basis of the request and shall at the same time transmit an official copy or authenticated transcript of the final judgement rendered, if any. Documents and articles so transmitted shall be returned without delay after the termination of the criminal proceedings unless such return is waived.

(5) If criminal proceedings have been instituted in the requested State, the authorities of the requesting State shall refrain from further prosecution or enforcement measures against the offender for the same offence:

- (a) If the offender has been finally acquitted on other than procedural grounds;
- (b) If the sentence imposed or the prescribed preventive measures have been served or remitted or have become subject to statutory limitation;
- (c) During such time as the sentence or preventive measures have been wholly or partly suspended.

(6) Expenses arising out of the application of article 21 of the Convention and of this article shall not be reimbursed.

Article XIV

(Ad article 22 of the Convention)

(1) Information from judicial records and information about measures deriving therefrom shall be exchanged at least once every six months between the Federal Minister of the Interior of the Republic of Austria and the Minister of Police of the State of Israel.

(2) On request, either Contracting State shall transmit to the other Contracting State copies of decisions rendered in particular criminal matters. The necessary correspondence shall be conducted between the Federal Minister of Justice of the Republic of Austria and the Minister of Justice of the State of Israel.

(3) Either Contracting State may, in the event of a change in its internal regulations relating to competence, inform the other Contracting State that it designates another authority instead of the authorities designated in paragraphs (1) and (2).

Article XV

(Ad article 29 of the Convention)

If the Convention is denounced by either Contracting State, the denunciation shall, in respect of relations between the Republic of Austria and the State of Israel, take effect two years after notification of the denunciation is received by the Secretary-General of the Council of Europe.

Article XVI

(1) This Agreement is subject to ratification; the instruments of ratification shall be exchanged as soon as possible at Vienna.

(2) This Agreement shall enter into force one month after the exchange of the instruments of ratification.

(3) This Agreement may be denounced in writing at any time through the diplomatic channel; it shall cease to have effect six months after denunciation. It shall also cease to have effect, in the absence of denunciation, at such time as the European Convention on Mutual Assistance in Criminal Matters ceases to apply as between the two Contracting States.

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

DONE at Jerusalem on 21 July 1975, in duplicate in the German and Hebrew languages, both texts being equally authentic.

For the State of Israel:

[YIGAL ALLON]

For the Republic of Austria:

[Dr. JOHANNA NESTOR]
