

No. 25652

**CHINA
and
POLAND**

**Agreement on legal assistance in civil and criminal cases.
Signed at Warsaw on 5 June 1987**

Authentic texts: Chinese and Polish.

Registered by China on 22 February 1988.

**CHINE
et
POLOGNE**

**Accord d'assistance judiciaire en matière civile et pénale.
Signé à Varsovie le 5 juin 1987**

Textes authentiques : chinois et polonais.

Enregistré par la Chine le 22 février 1988.

[TRANSLATION — TRADUCTION]

**AGREEMENT¹ BETWEEN THE PEOPLE'S REPUBLIC OF CHINA
AND THE POLISH PEOPLE'S REPUBLIC ON LEGAL AS-
SISTANCE IN CIVIL AND CRIMINAL CASES**

The People's Republic of China and
The Polish People's Republic,

Desiring to strengthen the bonds of friendly co-operation between the two countries in the legal field on the basis of respect for their sovereignty, independence, equality and mutual interests, have decided to conclude this Agreement and for that purpose have agreed as follows:

PART I. GENERAL PROVISIONS***Article 1. LEGAL PROTECTION***

Nationals of either Contracting Party shall enjoy the same legal protection in the territory of the other Contracting Party as is accorded to nationals of that Contracting Party. They shall have the right to institute proceedings and make applications before the courts and other authorities of the other Contracting Party on the same conditions as nationals of that Contracting Party.

Article 2. EXEMPTION FROM DEPOSIT OF SECURITY FOR LEGAL COSTS

The courts and other authorities of either Contracting Party that are competent to deal with civil cases shall not require a deposit of security for legal costs from nationals of the other Contracting Party who are domiciled or resident in the territory of that Contracting Party.

Article 3. ADVANCE PAYMENT OF COSTS OF PROCEEDINGS

Nationals of either Contracting Party shall be liable to make advance payment of the costs of civil proceedings in the territory of the other Contracting Party, on the same conditions and on the same scale as nationals of that Contracting Party.

Article 4. LEGAL ENTITIES

The preceding three articles shall apply as appropriate to legal entities.

Article 5. RELIEF FROM COSTS OF PROCEEDINGS

Nationals of either Contracting Party may apply for relief or exemption from the costs of civil proceedings in the territory of the other Contracting Party on the same conditions and on the same scale as nationals of that Contracting Party. Nationals of either Contracting Party applying for relief or exemption from the costs of proceedings shall submit an affidavit issued by the appropriate authority in their place of domicile or residence. If the applicant is not domiciled or resident

¹ Came into force on 13 February 1988, i.e., 30 days after the exchange of the instruments of ratification, which took place at Beijing in accordance with article 30.

in the territory of either Contracting Party, he may submit such an affidavit issued by the diplomatic mission or consular office of the State of which he is a national.

Article 6. PROCEDURE FOR RENDERING LEGAL ASSISTANCE

1. The courts and other authorities of the Contracting Parties shall render each other legal assistance through the intermediation of central authorities in direct contact with one another.

2. The central authorities referred to in the preceding paragraph shall be designated by each of the Contracting Parties through the diplomatic channel.

Article 7. APPLICATION FOR LEGAL ASSISTANCE

1. Legal assistance must be applied for in writing. The application for legal assistance shall include the designation of the authority making the application and of the authority applied to, the names of the parties, their nationality, occupation and place of domicile or residence, the names and addresses of their representatives and the main points of the case for which legal assistance is sought. The application should also include any other documents and materials essential for its execution.

2. An application for legal assistance in a criminal case shall additionally include a description of the criminal act conceived and the relevant legal provisions.

3. The aforementioned applications and other documents must bear the signature and official seal of the applicant authority of the Contracting Party.

Article 8. LANGUAGE

The letters sent and documents transmitted in connection with legal assistance shall be drawn up in the language of the originator and accompanied by a translation into the language of the other Contracting Party or into English.

Article 9. COSTS OF LEGAL ASSISTANCE

1. The Contracting Parties shall render each other legal assistance free of charge.

2. The applicant Contracting Party shall bear the travel and subsistence expenses of any witness or expert witness summoned to appear before a court of the applicant Contracting Party. The competent authority of the applicant Contracting Party shall make advance payment of such expenses if the individual summoned to appear so requests.

Article 10. DENIAL OF LEGAL ASSISTANCE

Legal assistance may be denied if, in the view of the Contracting Party applied to, its provision would be inimical to the sovereignty, security or public order of that Party. The Contracting Party applied to shall inform the applicant Contracting Party of its reasons for denying legal assistance.

Article 11. LAW APPLICABLE WHEN LEGAL ASSISTANCE IS RENDERED

1. When legal assistance is rendered, the authority applied to shall apply the law of its own State.

2. When legal assistance is rendered in civil cases, the authority applied to may, upon request, apply the law of the other Contracting Party in so far as it does not contradict the basic principles of the law of the Contracting Party applied to.

Article 12. DEFINITION

“Civil cases” as referred to in this Agreement shall also comprise cases relating to individual and property rights in the fields of commercial, family and labour law.

PART II. TRANSMISSION OF DOCUMENTS AND EXAMINATION OF EVIDENCE IN CIVIL CASES

Article 13. SCOPE

The Contracting Parties shall on application, transmit judicial and extra-judicial documents to each other, hear parties, witnesses and expert witnesses conduct expert appraisals and legal investigations and gather other evidence.

Article 14. EXECUTION OF APPLICATIONS

1. If an authority of the Contracting Party applied to is not competent to execute an application, it shall transmit the application to the authority that is competent and notify the applicant authority accordingly.

2. If the authority of the Contracting Party applied to is unable to execute an application at the address indicated in the application, it shall take appropriate steps to ascertain the correct address and carry out the request. In case of need, it may request the applicant Contracting Party to furnish it with additional information.

3. If the authority of the Contracting Party applied to is unable to execute the application as a result of inability to ascertain the address or for any other reason, it shall inform the applicant Contracting Party accordingly, indicating the specific reason and returning any documents transmitted by the applicant Contracting Party.

Article 15. NOTIFICATION OF EXECUTION

1. The competent authority of the Contracting Party applied to shall, following the procedure indicated in article 6, paragraph 1, inform the competent authority of the applicant Contracting Party of the time and place of delivery of documents or examination of evidence and send back an acknowledgement of delivery or the evidentiary material acquired.

2. The acknowledgement of delivery sent back must clearly show the date of delivery and the signature of the recipient, and the signature and official seal of the delivering authority and the individual effecting delivery. In the event of refusal to accept delivery of documents, the reason for refusal should be clearly indicated.

PART III. RECOGNITION AND ENFORCEMENT OF JUDGEMENTS IN CIVIL CASES

Article 16. SCOPE

1. On the conditions stipulated by this Agreement, the Contracting Parties shall recognize and enforce in their territory the following judicial decisions

handed down in the territory of the other Contracting Party following the entry into force of this Agreement:

- (a) Court judgements in civil cases;
- (b) Court judgements concerning claims for damages in criminal cases;
- (c) Judgements handed down by the authorities in matters of inheritance;
- (d) Awards by courts of arbitration.

2. "Court judgements" as referred to in this Agreement shall also comprise court settlements in civil cases.

Article 17. DOCUMENTS ACCOMPANYING AN APPLICATION

An application for recognition or enforcement of a judgement must be accompanied by:

- (a) An authentic copy of the judgement. If it is not evident from the copy that the judgement has come into effect and is enforceable, a court certificate to that effect should be attached;
- (b) Acknowledgement of delivery of the judgement or another document attesting to the fact that a copy of the judgement has been delivered;
- (c) A court certificate confirming that the losing party was properly summoned and, in the event of that party lacking legal competence, a document confirming that the losing party did have the requisite representation;
- (d) A certified translation of the application and of the documents listed in subparagraphs (a)-(c) into the language of the Contracting Party applied to or into English.

Article 18. PROCEDURE FOR RECOGNITION OR ENFORCEMENT OF A JUDGEMENT

1. An application for recognition or enforcement of a judgement may be transmitted by a court of one of the Contracting Parties to a court of the other Contracting Party, following the procedure indicated in article 6, paragraph 1. Such applications may also be lodged by a party directly with a court of the other Contracting Party with jurisdiction to recognize or enforce the judgement.

2. In proceedings for recognition or enforcement of a judgement, the court shall confine itself to considering whether the judgement meets the conditions laid down by this Agreement.

Article 19. EFFECT OF RECOGNITION AND PERMISSION FOR ENFORCEMENT

As soon as recognition or enforcement of a judgement is granted, the judgement shall have the same effect as if it had been handed down by the court which has recognized it or sanctioned its enforcement.

Article 20. DENIAL OF RECOGNITION AND ENFORCEMENT

The court judgements listed in article 16 shall not be recognized or enforced if:

- (a) Under the law of the Contracting Party in whose territory the judgement is to be recognized or enforced, the court which handed down the judgement did not have jurisdiction in the case;

- (b) Under the law of the Contracting Party in whose territory the judgement was handed down, the judgement has not come into effect or is not enforceable;
- (c) Under the law of the Contracting Party in whose territory the judgement was handed down, the losing party was not properly summoned before the court;
- (d) The party was deprived of the possibility of defending his or her rights or, if lacking legal competence, was deprived of the requisite representation;
- (e) A court in the territory of the Contracting Party in which the judgement is to be recognized or enforced has already handed down a judgement in the same case between the same parties which has come into effect, or proceedings are in progress, or a judgement which has been handed down by a court of a third State in the same case and come into effect has been legally recognized;
- (f) Recognition or enforcement of the judgement would be inimical to the fundamental principles of the law or public order in the Contracting Party in whose territory the judgement is to be recognized or enforced.

*Article 21. RECOGNITION AND ENFORCEMENT OF AWARDS
BY COURTS OF ARBITRATION*

The Contracting Parties shall recognize and enforce awards by courts of arbitration delivered in the territory of the other Contracting Party in conformity with the Convention¹ on the Recognition and Enforcement of Foreign Arbitral Awards concluded in New York on 10 June 1958.

PART IV. TRANSMISSION OF DOCUMENTS AND EXAMINATION OF EVIDENCE
IN CRIMINAL CASES

Article 22. SCOPE

The Contracting Parties shall on application transmit judicial and extra-judicial documents to each other, hear the parties, take statements from suspects, question witnesses, victims and expert witnesses, conduct expert appraisals, inspections and legal investigations and gather other evidence.

Article 23. EXECUTION OF APPLICATIONS AND NOTIFICATION OF EXECUTION

The provisions of articles 14 and 15 shall apply as appropriate to the transmission of documents and examination of evidence in criminal cases.

Article 24. DENIAL OF LEGAL ASSISTANCE IN CRIMINAL CASES

In criminal cases, legal assistance may be denied if:

- (a) In the view of the Contracting Party applied to, the conduct to which the application relates is a political or a military offence;
- (b) Under the law of the Contracting Party applied to, the conduct to which the application relates is not an offence;
- (c) The suspect or culprit is a national of the Contracting Party applied to, and is not within the territory of the applicant Contracting Party.

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

*Article 25.*¹ NOTIFICATION OF THE OUTCOME OF CRIMINAL PROCEEDINGS

The Contracting Parties shall transmit to each other copies of judgements by their courts which have come into effect, or abstracts from the details of cases, that relate to nationals of the other Contracting Party.

PART V. MISCELLANEOUS PROVISIONS

Article 26. EXCHANGE OF LEGAL INFORMATION

The Contracting Parties shall supply each other, on application, following the procedure indicated in article 6, paragraph 1, with information about the law and judicial practice in their countries and shall exchange publications dealing with their jurisprudence.

Article 27. EXEMPTION FROM AUTHENTICATION

Documents drawn up or authenticated by a court or other competent authority of one of the Contracting Parties and bearing an official seal shall not require authentication for use to be made of them in the territory of the other Contracting Party.

Article 28. PROTECTION OF WITNESSES AND EXPERT WITNESSES

1. Witnesses and expert witnesses, regardless of their nationality, summoned through the Contracting Party applied to to appear before a court may not be investigated for criminal liability or deprived of their freedom in any way by the applicant Contracting Party in connection with any crime committed before they enter its territory, in connection with their evidence or opinions, or in connection with any other conduct relating to the substance of the proceedings.

2. Witnesses or expert witnesses shall lose the protection granted in paragraph 1 above if they are able to leave the territory of the applicant Contracting Party and do not do so within 15 days from the day following their notification by the applicant authority that their presence is not required.

Article 29. APPLICATION OF THE AGREEMENT

Any difficulties that may arise in the application of this Agreement shall be resolved through the diplomatic channel.

PART VI. FINAL PROVISIONS

Article 30. RATIFICATION AND ENTRY INTO FORCE

This Agreement is subject to ratification and shall enter into force 30 days after the date of exchange of the instruments of ratification, which shall take place at Beijing.

¹ The article 25 reads as follows in the authentic Polish text:

"*Notification of sentences.* The Contracting Parties shall transmit to each other excerpts from their registers of convicted persons or copies of legally valid sentences passed by their courts which relate to nationals of the other Contracting Party."

Article 31. TERMINATION

This Agreement may be terminated by written notification from either of the Contracting Parties. It shall cease to have effect 12 months after the date of denunciation, failing which it shall remain in force indefinitely.

DONE at Warsaw on 5 June 1987, in duplicate in the Chinese and Polish languages, both texts being equally authentic.

IN WITNESS WHEREOF, the Plenipotentiaries of the Contracting Parties have signed and sealed this Agreement.

For the People's Republic
of China:

[QIAN QICHEN]

For the Polish People's
Republic:

[JERZY MAJEWSKI]