No. 26796

CZECHOSLOVAKIA and DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Treaty concerning the mutual provision of legal assistance in civil, family and criminal cases. Signed at Pyongyang on 11 September 1988

Authentic texts: Czech, Korean and Russian. Registered by Czechoslovakia on 6 September 1989.

TCHÉCOSLOVAQUIE et

RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE

Traité relatif à l'entraide judiciaire en matière civile, familiale et pénale. Signé à Pyongyang le 11 septembre 1988

Textes authentiques : tchèque, coréen et russe. Enregistré par la Tchécoslovaquie

[TRANSLATION --- TRADUCTION]

TREATY¹ BETWEEN THE CZECHOSLOVAK SOCIALIST REPUB-LIC AND THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA CONCERNING THE MUTUAL PROVISION OF LEGAL ASSIST-ANCE IN CIVIL, FAMILY AND CRIMINAL CASES

The Czechoslovak Socialist Republic and the Democratic People's Republic of Korea, with a view to deepening and developing the relations of friendship which have evolved between the two countries, and strengthening cooperation in civil, family and criminal cases,

Have agreed as follows:

Part I General provisions

Article 1 Legal protection

1. Nationals of either 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 nationals of that country.

2. Nationals of one Contracting Party shall have the right of access to the organs of the other Contracting Party having jurisdiction in civil, labour, family or criminal cases, and to bring actions, to lodge complaints and to present petitions under the same conditions as nationals of the other Contracting Party.

3. The provisions of this Treaty shall also apply to bodies corporate.

Article 2 PROVISION OF LEGAL ASSISTANCE

The Contracting Parties shall provide one another with legal assistance through the courts, the public prosecutor's offices and the notarial organs having jurisdiction in civil, labour, family or criminal cases. These organs shall communicate with one another through the intermediary of their central organs. The central organs are: for the Czechoslovak Socialist Republic, the Office of the Procurator General of the Czechoslovak Socialist Republic, the Ministry of Justice of the Czech Socialist Republic and the Ministry of Justice of the Slovak Socialist Republic; and for the Democratic People's Republic of Korea, the Supreme Court of the Democratic People's Republic of Korea.

¹ Came into force on 16 June 1989, i.e., 30 days after the exchange of the instruments of ratification, which took place at Prague on 16 May 1989, in accordance with article 49 (1).

Article 3 Legal assistance

The Contracting Parties shall provide one another with legal assistance by performing specific acts required in connection with judicial proceedings.

Article 4 Form and content of applications

1. Applications for legal assistance must contain the following particulars:

(1) The title of the applicant organ;

(2) The title of the organ applied to;

(3) The title of the case in respect of which legal assistance is applied for;

(4) The full names of the parties, the accused, tried or convicted persons, and the injured parties, their place of domicile or residence, their nationality and occupation, and, where necessary, their place and date of birth, and the full names of their parents;

(5) In the case of bodies corporate, their name and address;

(6) The full names and addresses of representatives;

(7) Essential information concerning the nature of the application and any other information necessary for its execution; in criminal cases, a description of the *corpus delicti*, including the extent of any damage caused.

2. The application document shall be certified by the signature and official seal of the applicant organ.

Article 5 PROCEDURE FOR EXECUTING APPLICATIONS

1. In executing an application for legal assistance, the organ applied to shall follow the laws of its own State.

However, at the request of the applicant organ, it shall follow the legal procedures of the State of the applicant organ, provided that they do not conflict with its laws.

2. If the organ applied to is not competent to execute the application, it shall transmit it to the competent organ.

3. In the event that it is impossible to execute the application, the organ applied to shall notify the applicant organ of the reasons and at the same time return the documents.

4. If the application does not indicate the exact address of the person, the organ applied to shall take the necessary steps, in accordance with the laws of its State, to ascertain the address.

5. After executing an application, the organ applied to shall transmit the executed documents to the applicant organ.

Article 6 Service of documents

The organ applied to shall serve documents in accordance with the procedure in force in its country, provided that the documents to be served are drawn up in accordance with article 13 of this Treaty. If the documents are not drawn up in accordance with article 13 of this Treaty, they may be delivered to the addressee if he consents.

Article 7

CONFIRMATION OF SERVICE OF DOCUMENTS

Service of documents shall be confirmed in accordance with the regulations in force in the State applied to, and such confirmation shall bear the signatures of the sender and the addressee, and the date and place of service.

Article 8 Attestation and acceptance of documents

1. Documents drawn up and certified by organs or officials within the limits of their competence in the territory of one Contracting Party, as well as copies and duplicates thereof, shall be accepted in the territory of the other Contracting Party without authentication provided that they are signed and stamped with an official seal bearing an emblem.

2. Official documents drawn up in the territory of one Contracting Party shall have the evidential value of official documents in the territory of the other Contracting Party.

Article 9

IMMUNITY OF WITNESSES AND EXPERTS

1. No witness or expert who is a national of the other Contracting Party and who, in response to a summons served by an organ of the Contracting Party applied to, has appeared before an organ of the applicant Contracting Party, may be prosecuted or taken into custody in connection with an offence which is the subject of legal proceedings or with any other offence committed before he crossed the State frontier of the applicant Party.

2. A witness or expert shall forfeit the above-mentioned guarantees if he fails to leave the territory of the applicant Contracting Party within two weeks from the date on which the judicial organ which interrogated him informs him that his presence is no longer required. Such period shall be deemed not to include any period during which such person may be unable, through no fault of his own, to leave the territory of the applicant Contracting Party.

3. Persons summoned to appear before a judicial organ shall be entitled to reimbursement by the organ of the applicant Contracting Party of their travelling expenses, and expenses incurred in connection with their stay abroad, and to compensation for any salary or wages lost; experts shall, in addition, be entitled to remuneration for their expertise. At the request of the witness or expert, the applicant Contracting Party shall pay an appropriate advance.

Article 10 Costs of legal assistance

The Contracting Party applied to shall itself bear the costs incurred in providing legal assistance in its own territory.

Article 11

INFORMATION

The Contracting Parties shall on request and through the intermediary of the organs referred to in article 2 of this Treaty, exchange information concerning the laws and judicial practice in force, or formerly in force, in their States.

Article 12 Information concerning sentences

Each Contracting Party shall annually inform the other of the final sentences passed by its courts during the year on nationals of the other Contracting Party.

Article 13

LANGUAGES

Documents served in the other Contracting Party in connection with the implementation of this Treaty must be drawn up in the language of the applicant Contracting Party, and must have a translation in the Russian language appended to them.

Part II

Special section

CHAPTER I LEGAL ASSISTANCE IN CIVIL AND FAMILY CASES

EXEMPTION FROM COSTS

Article 14

1. If a national of one Contracting Party brings an action before a court of the other Contracting Party while in the territory of one of the Contracting Parties, he shall not be required to deposit security for legal costs.

2. A national of one Contracting Party shall be exempt in the territory of the other Contracting Party from legal costs under the same conditions and to the same extent as its own nationals.

3. Exemption from legal costs shall extend to all legal actions, including the compulsory enforcement of judgements.

4. A national who has been exempted under the legislation of one Contracting Party from legal costs and notarial expenses in connection with the consideration of a case by a court shall also be exempted from such expenses during legal proceedings involving the same case in the territory of the other Contracting Party.

Article 15

1. Documents certifying personal and property status which are essential for obtaining exemption from legal costs and notarial expenses shall be issued by the competent organ of the Contracting Party in whose territory the applicant is domiciled. In other cases, they shall be issued by the diplomatic mission or consulate of the Contracting Party of which he is a national.

2. The court ruling on the question of exemption from legal costs may, where necessary, require the organ issuing the certifying documents to furnish additional information.

Article 16

1. A national of one of the Contracting Parties intending to apply to a court of the other Contracting Party for exemption from costs may submit an application in writing or orally to the court concerned, which will enter it into a protocol.

2. In accordance with the procedure provided for in article 2 of this Treaty, the court shall transmit the protocol to the corresponding court of the other Contracting Party, together with the certifying documents referred to in article 15 of this Treaty and any other documents submitted by the applicant.

3. Other applications relating to exemption from legal expenses may also be submitted with the application for exemption from legal costs.

Article 17

Forwarding of certifying documents

A Contracting Party shall, at the request of the other Contracting Party, send documents certifying a person's registration, evidence of education and employment history, evidence of personal and family status, salary or wages and property status, as well as any other certifying documents required for the defence of the rights and interests of nationals of the other Contracting Party in the judicial organs.

Article 18 LEGAL CAPACITY

1. The legal capacity of physical persons shall be determined in accordance with the law of the Contracting Party of which the person concerned is a national.

2. The legal capacity of a body corporate shall be determined in accordance with the law of the Contracting Party under whose law it was incorporated.

Article 19 Declaration of persons as dead

In proceedings to declare persons dead and in proceedings to establish the fact of death, the law applied shall be that of the Contracting Party of which the person concerned was a national at the time when he was last known to be alive. The organ of the same Contracting Party shall have jurisdiction.

Article 20 Contract of marriage

A contract of marriage shall be determined by the laws of the Contracting Parties of which the persons wishing to marry are nationals. The form of the contract of marriage shall be governed by the law of the Contracting Party in whose territory the marriage is contracted.

Article 21

DISSOLUTION OF MARRIAGE, ANNULMENT OF MARRIAGE AND PERSONAL AND PROPERTY RELATIONS BETWEEN SPOUSES

1. Dissolution and annulment of marriage and personal and property relations between spouses, in cases where the spouses are of the same nationality, shall be determined by the law of the Contracting Party of which they are nationals. Jurisdiction in the conduct of legal proceedings shall rest with the court of the Contracting Party of which the spouses were nationals at the time the application was submitted.

2. In cases where the spouses are not of the same nationality, the law to be applied shall be that of the Contracting Party in whose territory the spouses last had a joint domicile; in cases where they have not had a joint domicile, the court which accepted the suit shall apply the law of its own country. Jurisdiction in the conduct of legal proceedings shall rest with the court of the Contracting Party in whose territory they had their last joint domicile, and in cases where they did not have a joint domicile, jurisdiction shall rest with the court of the Contracting Party which first accepted the suit.

Article 22

LEGAL RELATIONS BETWEEN PARENTS AND CHILDREN

1. Paternity and other legal relations between children and parents shall be decided in accordance with the law of the Contracting Party of which the child is a national.

2. In any ruling on the legal relations referred to in paragraph 1 of this article, jurisdiction shall rest with the court of the Contracting Party of which the child is a national.

3. If at the time legal proceedings are instituted, the child has the nationality of both Contracting Parties, the law of the Contracting Party in whose territory the child was born shall apply, and jurisdiction shall rest with the court of that Party.

Article 23 $[Adoption and the termination of adoption]^{l}$

1. In adoption, the law to be applied shall be that of the Contracting Party of which the person submitting the application for adoption is a national.

2. If the spouses are of different nationalities, adoption must be carried out in accordance with the requirements of the laws in force in the territories of both Parties.

¹ The text within brackets appears only in the authentic Russian text.

3. If the child is a national of one Contracting Party and the adopter is a national of the other Contracting Party, adoption shall be subject to the consent of the child and his legal representative or of the competent institution of the Contracting Party concerned, if such consent is required by the law of the Contracting Party of which the child is a national.

4. Jurisdiction in the conduct of legal proceedings in adoption cases shall rest with the organs of the Contracting Party of which the adopter is a national at the time the application is submitted. In the case referred to in paragraph 2 of this article, jurisdiction shall rest with the organs of the Contracting Party in whose territory the spouses had their last joint domicile.

5. Paragraphs 1, 2, 3 and 4 of this article shall apply also to the termination of adoption.

Article 24

GUARDIANSHIP AND CURATORSHIP

1. The establishment or termination of guardianship or curatorship shall be governed by the law of the Contracting Party of which the ward is a national.

2. Legal relations between a ward and his guardian or curator shall be determined by the laws of the Contracting Party whose organ appointed the guardian or curator.

3. The obligation to accept the office of guardian or curator shall be governed by the law of the Contracting Party of which the person appointed guardian or curator is a national.

4. In actions to establish or terminate guardianship or curatorship, jurisdiction shall rest with the organ of the Contracting Party of which the ward is a national.

Article 25 SUCCESSION

1. In matters relating to succession, by law or under a will, to property situated in the territory of one Contracting Party and to the drawing up or revocation of a will, a national of the other Contracting Party shall enjoy the same conditions and rights as a national of the first Contracting Party.

2. Succession to movable property shall be governed by the law of the Contracting Party of which the testator was a national at the time of his death, and succession to immovable property shall be governed by the law of the Contracting Party in whose territory such property is situated. The determination of whether property is movable or immovable shall be governed by the law of the Contracting Party in whose territory the property is situated.

3. Jurisdiction in matters relating to succession to movable property shall be exercised by the organ of the Contracting Party of which the testator was a national at the time of his death. Jurisdiction in matters relating to succession to immovable property shall be exercised by the organ of the Contracting Party in which such property is situated.

4. The form of a will, the capacity to make or revoke a will and the legal effects of defective testamentary dispositions shall be determined by the law of the Contracting Party of which the testator was a national at the time he drew up the will.

However, the form of a will and its revocation may also be determined by the law of the territory in which the will was drawn up.

5. Where, under the law of the Contracting Party applicable to the succession, there are no heirs, the movable property shall revert to the Contracting Party of which the testator was a national at the time of his death, and the immovable property shall revert to the Contracting Party in whose territory it is situated.

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

Article 26

Each Contracting Party shall, under this Treaty, recognize and enforce judgements relating to civil, labour and family cases which have become final and judgements concerning actions for damages in criminal cases rendered in the territory of the other Contracting Party which have become final.

Article 27

The judgements specified in article 26 shall be recognized and enforced under the following conditions:

(1) When the judgement, under the laws of the Contracting Party in whose territory it was rendered, has become final and enforceable;

(2) When a court of the Contracting Party in whose territory the judgement was rendered has jurisdiction under the laws of the other Contracting Party, in whose territory the recognition and enforcement of judgements is required, or on the basis of this Treaty;

(3) When a party to the legal proceedings who did not take part in the hearing was, in accordance with this Treaty, notified in the appropriate manner and in good time that the case was being heard or, in the event of his legal incapacity, had an appropriate representative;

(4) When a judgement in the same case between the countries has not yet been rendered and has not become final in the Contracting Party in whose territory the judgement must be recognized and enforced.

Article 28

1. Applications for enforcement of a judgement may be made directly to the competent court of the Contracting Party in whose territory the judgement must be enforced, or to the court which rendered the judgement in the first instance, in which case the application shall be transmitted to the competent court of the other Contracting Party in the manner specified in article 2 of this Treaty.

2. Applications shall be accompanied by:

(1) The judgement, or a certified copy thereof, and a document stating that the judgement has become final and enforceable, if this is not indicated in the text of the judgement itself;

(2) A certificate to the effect that the party against whom the judgement was rendered, not having participated in the proceedings, was in accordance with this Treaty, informed in the appropriate manner and in good time that the case was being

heard, and conclusive information to the effect that, in the event of his legal incapacity, the party concerned was represented in the prescribed manner.

Article 29

1. The court of the Contracting Party in whose territory the judgement is enforceable shall rule on the question of compulsory enforcement in accordance with its own legislation. The court shall monitor the fulfilment of the conditions specified in article 27 of this Treaty.

2. A debtor may object to the compulsory enforcement of a judgement if such objection is admissible under the law of the Contracting Party to whose court the application for authorization of compulsory enforcement was submitted.

Article 30

Judgements concerning the payment of legal costs which have become final shall, on request, be enforced in the territory of the other Contracting Party free of charge.

Article 31

The costs of compulsory enforcement shall be established in accordance with the law of the Contracting Party in whose territory enforcement is sought.

Article 32

The judgements specified in article 26 of this Treaty shall be recognized and enforced if they became final and enforceable after the entry into force of this Treaty.

CHAPTER II Legal assistance in criminal cases

Article 33 Obligation to extradite

1. Each Contracting Party undertakes, on the request of one of the Parties, to extradite to the other Party persons in its territory whose presence is required for the purpose of criminal prosecution or for the enforcement of a penalty in accordance with the conditions specified in this Treaty.

2. Extradition for the purpose of prosecution shall take place only in respect of the commission of offences which are punishable by deprivation of liberty for a period of more than one year under the law of both Contracting Parties.

3. Extradition for the purpose of execution of a sentence shall take place only in respect of the offences specified in paragraph 2 of this article which are punishable by deprivation of liberty for a period of more than one year or by a heavier penalty.

Article 34 Refusal of extradition

1. Extradition shall not take place if the person claimed is a national of the Contracting Party applied to.

2. Extradition may be refused when:

(1) The person claimed has committed an offence in the territory of the Contracting Party applied to;

(2) Under the law of the Contracting Party applied to, criminal proceedings cannot be instituted or a sentence cannot be executed by reason of lapse of time or for other legal reasons;

(3) The person claimed has already been sentenced in the territory of the Contracting Party applied to for the same offence, or an order has been made for termination of the proceedings.

Article 35

REQUISITION FOR EXTRADITION

1. Requisitions for extradition for the purpose of prosecution shall be accompanied by a copy of the warrant of arrest, facts about the *corpus delicti* and the articles of the law requiring their application, and, if any material damage was caused by the offence, an indication of the extent of such damage.

2. Requisitions for extradition for the purpose of execution of a sentence shall be accompanied by a copy of the final sentence and the articles of the law defining the offence. If the convicted person has already served part of his sentence, information about this must be transmitted.

3. Requisitions for extradition shall, as far as possible, be accompanied by a document giving particulars of the person claimed, which must include personal details, a description of his facial characteristics and general appearance, any distinguishing features, his address, photograph and fingerprints.

4. If the Contracting Party to which the requisition for extradition is addressed has not received the necessary information, it may request that supplementary information be transmitted within two months. This time-limit may be extended for a further month if there are valid reasons therefor.

5. The Contracting Party to which the request for extradition is addressed shall discontinue the extradition proceedings and release the person from custody if the supplementary information requested has not been received within the time-limit specified in paragraph 4 of this article.

Article 36 Arrest of a person whose extradition is claimed

1. On receipt of a requisition for extradition, a Contracting Party shall take appropriate steps, in accordance with this Treaty, to arrest the person claimed.

2. The person claimed may be arrested pending receipt of the requisition for extradition if the competent organ of the applicant Contracting Party specifies that there exists a warrant of arrest for the person or a final sentence, and at the same

time states that a requisition for extradition is being forwarded. Such a request may be transmitted by post, telegraph, telephone or any similar means.

3. The competent organ of a Contracting Party may arrest a person in its territory even without a request under paragraph 2 of this article, if it is known that the person has committed an offence in the territory of the other Contracting Party, as specified in article 33 of this Treaty.

4. Notification of arrest under paragraphs 2 and 3 of this article shall be sent immediately to the other Contracting Party.

5. A person arrested may be released if the requisition for his extradition is not received within two months from the date on which notification of his arrest was sent.

Article 37

PROCEDURE FOR EXTRADITION

The Contracting Party applied to shall notify the applicant Contracting Party of the place and time of extradition. The applicant Contracting Party shall provide transport in connection with the extradition.

Article 38

REQUISITIONS FOR EXTRADITION FROM MORE THAN ONE STATE

If extradition in connection with one and the same person is requested by more than one State, the Party applied to shall first take into account the nationality of the person claimed in complying with them.

Article 39

LIMITS TO THE PROSECUTION OF EXTRADITED PERSONS

1. An extradited person may not, without the consent of the Contracting Party applied to, be prosecuted or punished for another offence which was committed before his extradition, and he may not be surrendered to a third State.

2. Such consent shall not be required in the following cases:

(1) If the extradited person fails to leave the territory of the applicant Contracting Party within one month of the conclusion of the proceedings or of the completion or remission of the sentence;

(2) If the extradited person leaves the territory of the applicant Contracting Party, but later voluntarily returns.

Article 40 Delivery of articles

1. A Contracting Party shall, on request, at the same time as it extradites an offender, deliver to the other Contracting Party any articles that were used in the offence or acquired by criminal means. Such articles shall be delivered even when the offender has died.

2. The Contracting Party which received the articles must, after the conclusion of the proceedings, return them to the other Contracting Party so that they can be transmitted to the person having a right to them.

3. No restrictions shall apply to articles delivered in accordance with this Treaty, and they shall not be subject to taxes or duties.

Article 41

CONVEYANCE IN TRANSIT

1. Each Contracting Party shall, at the request of the other Contracting Party, authorize the conveyance in transit through its territory of any person extradited from a third State.

2. The means of transport, the itinerary and other conditions shall be agreed in each individual case by the respective organs of the two Parties.

3. Applications for authorization of conveyance in transit shall be made in the same manner as requisitions for extradition.

Article 42

COSTS OF EXTRADITION AND CONVEYANCE IN TRANSIT

The costs of extradition and conveyance in transit shall be borne by the applicant Party. Other costs shall be borne by the Party applied to.

Article 43

NOTIFICATION OF THE RESULTS OF CRIMINAL PROSECUTION

The Contracting Parties shall inform each other of the results of criminal proceedings against persons extradited to them. If the person concerned has been sentenced, a copy of the sentence shall be transmitted once it has become final.

Article 44

OBLIGATION TO INSTITUTE CRIMINAL PROCEEDINGS

1. A Contracting Party undertakes, on request, to institute proceedings, in accordance with its laws, against any of its own nationals suspected of having committed an offence in the territory of the other Contracting Party.

2. The obligation to institute proceedings shall extend also to conduct on the part of the suspected persons which is deemed to be an offence under the law of the applicant Contracting Party, but is deemed to be only an infringement of the law under the law of the Contracting Party applied to.

3. Claims brought for damages arising from the offences of the accused persons shall be considered at the same time as the criminal case itself.

4. Each Contracting Party shall inform the other of the results of the prosecution, and shall, on request, transmit to it a copy of the final judgement.

Article 45 Application for investigation

Applications for investigation of an offence must contain the following particulars:

(1) Personal details of the perpetrator of the offence;

(2) Place of domicile and residence of the perpetrator of the offence;

(3) The *corpus delicti* and the relevant articles of the law;

(4) Evidence pertaining to the investigation and, where necessary, copies of official documents;

(5) Physical description of the perpetrator of the offence and, where available, a photograph.

Applications for the investigation of a perpetrator of an offence must bear the official seal of the applicant organ and the signature of the officer in charge.

Article 46

HANDING OVER OF CONVICTED PERSONS TO SERVE SENTENCES

In accordance with the Convention on the transfer of sentenced persons¹ sentenced to deprivation of liberty, the Contracting Parties shall hand over convicted persons to each other to serve sentences in the State of which they are nationals.

Part III Final provisions

Article 47 Cooperation

With a view to the strengthening of cooperation in the fight against offenders and the successful implementation of this Treaty, the Contracting Parties shall hold consultations between their respective central organs.

Article 48 Settlement of differences

The Contracting Parties shall settle any differences of opinion which may arise in the interpretation and implementation of this Treaty through the diplomatic channel or through consultations between the relevant central organs.

Article 49 Ratification and entry into force

1. This Treaty shall be subject to ratification and shall enter into force 30 days after the exchange of the instruments of ratification at Prague.

2. The Treaty shall remain in force for a period of five years. Unless one of the Contracting Parties submits a written proposal to terminate this Treaty not later

¹ United Nations, Treaty Series, vol. 1496, p. 91.

than six months before the expiry of the period specified above, it shall remain in force for subsequent five-year periods.

This Treaty was signed at Pyongyang, on 11 September 1988.

This Treaty has been drawn up in two copies, each in the Czech, Korean and Russian languages, all three texts being equally authentic. If any differences of interpretation should arise, the text in the Russian language should be the guide.

> For the Czechoslovak Socialist Republic:

For the Democratic People's Republic of Korea: [KING YONG-NAM]

[BOHUSLAV CHŇOUPEK]