

No. 32198

**MEXICO
and
FRANCE**

Convention concerning judicial assistance in criminal matters. Signed at Mexico City on 27 January 1994

Authentic texts: Spanish and French.

Registered by Mexico on 24 October 1995.

**MEXIQUE
et
FRANCE**

Convention d'entraide judiciaire en matière pénale. Signée à Mexico le 27 janvier 1994

Textes authentiques : espagnol et français.

Enregistrée par le Mexique le 24 octobre 1995.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE FRENCH REPUBLIC CONCERNING JUDICIAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United Mexican States and
The Government of the French Republic,
Wishing to establish more effective cooperation in the area of judicial assistance,
Have agreed on the following provisions:

PART I

GENERAL PROVISIONS

Article 1

1. The two States (hereinafter referred to as “the Parties”) undertake to extend to each other, in accordance with the provisions of this Convention, the broadest possible judicial assistance in any proceeding relating to criminal offences the punishment of which is, at the time when assistance is requested, within the competence of the judicial authorities of the requesting Party.

2. This Convention shall not apply to the execution of warrants of arrest and sentences or to military offences that do not constitute offences under ordinary law.

Article 2

In order to ensure the necessary cooperation between the Parties for the provision of the judicial assistance provided for in this Convention, the United Mexican States designates the Office of the Attorney-General of the Republic as its central authority, and the French Republic designates the Ministry of Justice as its central authority. The central authority of the requested State shall comply with the requests expeditiously or, if necessary, shall transmit them to other competent authorities for execution. The competent authorities shall take all necessary measures to comply promptly with such requests, in accordance with article 1.

Article 3

The competent authorities shall be the judicial authorities and the public prosecutor's office in the United Mexican States, and the judicial authorities, including the public prosecutor's office, in the French Republic.

¹ Came into force on 1 March 1995, i.e., the first day of the second month following the date of receipt of the last of the notifications (21 July 1994 and 22 January 1995) by which the Parties had informed each other of the completion of the required constitutional procedures, in accordance with article 27 (1).

Article 4

Judicial assistance may be refused:

(a) If the request relates to any offence which the requested Party regards as a political offence or an offence connected with a political offence;

(b) If the requested Party considers that execution of the request is likely to impair its sovereignty, security, public policy or other essential national interests.

PART II

REQUESTS FOR JUDICIAL ASSISTANCE

Article 5

1. The requested Party shall, in the manner provided for in its legislation, execute requests for judicial assistance relating to a criminal case which are received from the competent authorities of the requesting Party and whose object is the performance of acts pertaining to the investigation of the case or the communication of records, documents or evidence or the restitution to the victim, where applicable and without prejudice to the rights of third parties, of articles or valuables acquired as a result of an offence and found in the possession of the perpetrator thereof.

2. If the requesting Party wishes to have witnesses or experts give testimony under oath, it shall make an express request to that effect and the requested Party shall comply with it unless its national legislation precludes this.

3. The requested Party may transmit only certified true copies or photocopies of the records or documents requested. However, if the requesting Party expressly asks for communication of the originals, its request shall be complied with to the extent possible.

Article 6

If the requesting Party makes an express application to that effect, the requested Party shall inform it of the date and place of execution of the request for assistance. The authorities and individuals authorized by it may be present at the execution if the requested Party so agrees. Such presence shall not authorize the exercise of functions which are exclusively within the competence of the authorities of the requested State.

Article 7

1. The evidence and the originals of records and documents which have been communicated in execution of a request for judicial assistance shall be retained by the requesting Party unless the requested Party asks that they be returned.

2. The requested Party may delay the delivery of evidence, records or documents whose communication is requested if they are required for criminal proceedings in progress.

PART III

DELIVERY OF JUDICIAL DOCUMENTS AND JUDICIAL DECISIONS — APPEARANCE
OF WITNESSES, EXPERTS AND ACCUSED PERSONS*Article 8*

1. The requested Party shall effect the delivery of judicial instruments and judicial decisions transmitted to it for that purpose by the requesting Party.

Such delivery may be effected by a simple handing over of the document or decision to the intended recipient. If the requesting Party makes an express application to that effect, the requested Party shall effect delivery by one of the methods provided for in its legislation for similar notifications or by an *ad hoc* method which is compatible with that legislation.

2. Proof of delivery shall consist either of a receipt dated and signed by the recipient or of a statement issued by the requested Party confirming that delivery has been effected and indicating the method and date thereof. The document showing proof of delivery shall be transmitted forthwith to the requesting Party. At the latter's request, the requested Party shall specify whether delivery was effected in accordance with its laws. If it was not possible to deliver the document, the requested Party shall immediately inform the requesting Party why delivery could not be effected.

3. Summonses shall be transmitted to the requested Party at least 40 days before the date on which the person summoned is to appear.

Article 9

A witness or expert who fails to comply with a summons to appear in court the delivery of which was requested may not be subjected, even where such summons contains injunctions, to any penalty or measure of constraint, unless he subsequently goes, of his own free will, to the territory of the requesting Party and is summoned again in due form.

Article 10

The allowances to be paid and the travel and subsistence expenses to be reimbursed to witnesses and experts by the requesting Party shall be calculated from the place of their residence and shall be at least equal to those provided for under the scales and regulations in force in the country in which the appearance is required.

Article 11

1. If the requesting Party considers that the personal appearance of a witness or an expert before its judicial authorities is particularly necessary, it shall indicate this in the request for delivery of the summons, and the requested Party shall urge the witness or the expert to appear.

The requested Party shall notify the requesting Party of the response of the witness or expert.

2. In the case provided for in paragraph 1, the request or summons must mention the approximate amount of the allowances to be paid and the travel and subsistence expenses to be reimbursed.

3. If a request is made to that effect, the requested Party may issue an advance to the witness or expert. This shall be mentioned in the summons and reimbursed by the requesting Party.

Article 12

1. Any detained person whose appearance as a witness or for the purposes of confrontation is requested by the requesting Party shall be transferred temporarily to the territory in which the hearing is to take place on condition that he is sent back within the period indicated by the requested Party and subject to the provisions of article 13 insofar as they may apply.

The transfer may be denied:

- (a) If the detained person does not give his consent,
- (b) If his presence is required in criminal proceedings taking place in the territory of the requested Party,
- (c) If his transfer is likely to prolong his detention, or
- (d) If there are other compelling reasons against transferring him to the territory of the requesting Party.

2. Either Party may authorize the transit through its territory of persons who are detained by a third State and whose personal appearance for the purposes of a hearing has been requested by the other Party.

Such authorization shall be granted in response to a request submitted together with all necessary documentation.

3. The person who is transferred must remain in detention in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit has been requested, unless the requested Party asks for his release during the temporary transfer.

4. Either Party may refuse to allow the transit of its nationals.

Article 13

1. No witness or expert of any nationality who, in response to a summons, appears before the judicial authorities of the requesting Party shall be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that Party by reason of acts committed or a conviction pronounced prior to his departure from the territory of the requested Party.

2. No person of any nationality who is summoned to appear before the judicial authorities of the requesting Party for the purpose of giving evidence about acts in respect of which proceedings have been instituted against him shall be prosecuted, detained or subjected to any other restriction of his personal liberty by reason of acts committed or a conviction pronounced prior to his departure from the territory of the requested Party and not mentioned in the summons.

3. The immunity provided for in this article shall cease if the witness, expert or person against whom proceedings have been instituted, having had the opportunity to leave the territory of the requesting Party during a period of 15 consecutive days after the date on which his presence ceased to be required by the judicial authorities, nevertheless remained in that territory or, having left it, returned to it.

PART IV

COURT RECORDS

Article 14

1. The requested Party shall, to the extent that its competent authorities would themselves be able to obtain them in a similar case, transmit excerpts from the court records and any information relating thereto which is requested of it by the competent authorities of the requesting Party for the purposes of a criminal case.

2. In case other than those provided for in paragraph 1, such a request shall be complied with on the conditions provided for by the legislation, regulations or practice of the requested Party.

PART V

PROCEDURE

Article 15

1. Requests for reciprocal assistance shall contain the following particulars:

- (a) The name of the requesting authority,
- (b) The purpose of and reason for the request,
- (c) To the extent possible, the identity and nationality of the person concerned,
- (d) The name and address of the intended recipient, where appropriate, and
- (e) The date of the request.

2. The requests for judicial assistance provided for in articles 5 and 6 shall also contain a summary of the facts and shall mention the characterization thereof.

Article 16

1. The requests for judicial assistance provided for in articles 5 and 6, as well as the requests provided for in articles 12 and 14, shall be sent by the central authority of the requesting Party to the central authority of the requested Party and returned through the same channel.

2. In an emergency, the requests for judicial assistance provided for in articles 5 and 6 may be sent directly by the competent authorities of the requesting Party to the competent authorities of the requested Party. They shall be returned together with the documentation relating to their execution through the channel provided for in paragraph 1.

3. The requests for the delivery of judicial instruments and judicial decisions provided for in article 8 shall be transmitted from one central authority to the other, but may be transmitted directly between the competent authorities.

4. In cases where direct transmittal is permitted under this Convention, it may be effected by mail or by such other means as may be agreed upon by the central authorities.

Article 17

Requests and accompanying documentation need not be translated.

Article 18

Evidence and documentation transmitted in application of this Convention shall be exempted from any authentication formality unless one of the central authorities expressly requests otherwise.

Article 19

If the authority which receives a request for assistance is incompetent to comply with it, it shall automatically transmit such request to the competent authority of its country and, if the request has been sent directly, it shall so inform the requesting Party through the same channel.

Article 20

Reasons shall be given for any refusal of judicial assistance and shall be communicated to the requesting Party.

Article 21

Subject to the provisions of article 10, the execution of requests for assistance shall not give rise to the refunding of any costs save the fees paid to experts in the territory of the requested Party and the expenses arising from the transfer of detained persons in application of article 12.

PART VI

REPORTS WITH A VIEW TO PROSECUTION

Article 22

1. Either Party may report to the other Party acts which are likely to constitute a criminal offence which is within the latter's jurisdiction, so that it may institute criminal proceedings in its territory. Such a report shall be submitted through the central authorities.

2. The requested Party shall inform the requesting Party of the action taken on the report and shall, if appropriate, transmit a copy of the decision reached.

3. The provisions of article 17 shall apply to the reports provided for in paragraph 1.

PART VII

EXCHANGE OF CONVICTIONS

Article 23

Each Party shall inform the other Party of criminal sentences and subsequent measures which concern nationals of that other Party and which have been entered in the court records. The central authorities shall exchange such reports at least once a year.

PART VIII

FINAL PROVISIONS

Article 24

1. Each of the two Parties shall notify the other of the completion of the constitutional procedures required for the entry into force of this Convention, which shall take effect on the first day of the second month following the date of receipt of the second such notification.

2. Either of the two Parties may denounce this Convention at any time by sending written notification to the other State through the diplomatic channel; in this case, such denunciation shall take effect on the first day of the third month following the date of receipt of such notification.

IN WITNESS WHEREOF the representatives of the two Governments, being duly authorized for that purpose, have signed this Convention.

DONE at Mexico City on 27 January 1994 in duplicate in the Spanish and French languages, both texts being equally authentic.

For the Government
of the United Mexican States:

MANUEL TELLO
Minister for Foreign Affairs

For the Government
of the French Republic:

ALAIN JUPPÉ
Minister for Foreign Affairs