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Canada
and
Ukraine

Treaty between Canada and Ukraine on mutual legal assistance in criminal matters. Ottawa, 23 September 1996

Entry into force: *1 March 1999, in accordance with article 24*

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Canada
et
Ukraine

Traité d'entraide judiciaire en matière pénale entre le Canada et l'Ukraine. Ottawa, 23 septembre 1996

Entrée en vigueur : *1er mars 1999, conformément à l'article 24*

Textes authentiques : *anglais, français et ukrainien*

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[ENGLISH TEXT – TEXTE ANGLAIS]

TREATY BETWEEN

CANADA

AND

UKRAINE

ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CANADA AND UKRAINE,

DESIRING to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime through cooperation and mutual assistance in criminal matters,

HAVE AGREED as follows:

PART I: GENERAL PROVISIONS

ARTICLE 1

Obligation to Grant Mutual Assistance

1. The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.

2. Mutual assistance shall be any assistance given by the Requested State in respect of investigations or proceedings in the Requesting State in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.

3. Criminal matters for the purpose of this Treaty mean, for Ukraine, investigations or proceedings relating to any offence created by a law adopted by the Verkhovna Rada (Parliament), and, for Canada, investigations or proceedings relating to any offence created by a law of Parliament or by the legislature of a province.

4. Criminal matters shall also include investigations or proceedings relating to offenses concerning taxation, duties, customs and international transfer of capital or payments.

5. Assistance shall include:

   (a) location of persons and objects, including their identification;

   (b) service of documents, including documents seeking the attendance of persons;

   (c) provision of information, documents and other records, including criminal records, judicial records and government records;

(d) delivery of property, including lending of exhibits;

(e) taking of evidence and obtaining of statements of persons;

(f) search and seizure;

(g) making detained persons and others available to give evidence or assist investigations;

(h) measures to locate, restrain and forfeit the proceeds of crime; and

(i) other assistance consistent with the objects of this Treaty.

ARTICLE 2

Execution of Requests

1. Requests for assistance shall be executed promptly in accordance with the law of the Requested State and, insofar as it is not prohibited by that law, in the manner requested by the Requesting State.

2. The Requested State shall, upon request, inform the Requesting State of the time and place of execution of the request for assistance.

3. The Requested State shall not decline execution of a request on the ground of bank secrecy.

ARTICLE 3

Refusal or Postponement of Assistance

1. Assistance may be refused if, in the opinion of the Requested State the execution of the request would impair its sovereignty, security, public order or essential public interest, prejudice the safety of any person or be unreasonable on other grounds.

2. Assistance may be postponed by the Requested State if execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. The Requested State shall promptly inform the Requesting State of a decision of the Requested State not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing to grant a request for assistance or before postponing the grant of such assistance, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

PART II: SPECIFIC PROVISIONS

ARTICLE 4

Location and Identity of Persons and Objects

The competent authorities of the Requested State shall make best efforts to ascertain the location and identity of persons or objects specified in the request.

ARTICLE 5

Service Of Documents

1. The Requested State shall serve any document transmitted to it for the purpose of service.

2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance.

3. The Requested State shall return a proof of service in the manner required by the Requesting State.

ARTICLE 6

Transmission of Documents and Objects

1. When the request for assistance concerns the transmission of records and documents, the Requested State may transmit certified true copies thereof, unless the Requesting State expressly requests the originals.

2. The original records or documents or objects transmitted to the Requesting State shall be returned to the Requested State as soon as possible, upon the latter's request.

3. Insofar as not prohibited by the law of the Requested State, records, documents or objects shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State.

ARTICLE 7

Presence of Persons Involved in the Proceedings in the Requested State

1. A person requested to testify and produce documents, records or other articles in the Requested State shall be compelled, if necessary by subpoena, order or other means to appear and testify and produce such documents, records and other articles, in accordance with the requirements of the law of the Requested State.

2. To the extent not prohibited by the law of the Requested State, judges or officials of the Requesting State and other persons concerned in the investigation or proceedings shall be permitted to be present at the execution of the request and to participate in the proceedings in the Requested State. The right to participate in the proceedings shall include the right of any person present to pose questions. The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript shall be permitted.

ARTICLE 8

Search and Seizure

1. The competent authority that has executed a request for search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents, records or things seized and the circumstances of the seizure.

2. The Requesting State shall observe any conditions imposed by the Requested State in relation to any seized documents, records or things which may be delivered to the Requesting State.

ARTICLE 9

Availability of Persons to Give Evidence or Assist Investigations in the Requesting State

1. The Requesting State may request that a person be made available to testify or to assist an investigation.

2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's concurrence there to. That person shall be informed of any expenses and allowances payable.

ARTICLE 10

Making Detained Persons Available to Give Evidence or Assist Investigations

1. A person serving a sentence in custody in the Requested State shall, at the request of the Requesting State, be temporarily transferred to the Requesting State to assist investigations or to give evidence in proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person.

2. Where the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

3. Where the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance.

ARTICLE 11

Safe Conduct

1. Subject to article 10(2) a person present in the Requesting State in response to a request seeking that person's attendance shall not be prosecuted, detained or subjected to any other restriction of personal liberty in that State for any acts or omissions which preceded that person's departure from the Requested State, nor shall that person be obliged to give evidence in any proceeding other than the proceedings to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the Requesting State, has not left it within a period of thirty days after being officially notified that that person's attendance is no longer required or, having left that territory, has voluntarily returned.

3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

ARTICLE 12

Proceeds of Crime

1. The Requested State shall, upon request, endeavour to ascertain whether any proceeds of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries. In making the request, the Requesting State shall notify the Requested State of the basis of its belief that such proceeds may be located in the latter's jurisdiction.

2. Where, pursuant to paragraph 1 of this Article, suspected proceeds of crime are found, the Requested State shall take such measures as are permitted by its law to freeze, seize and confiscate such proceeds.

PART III: PROCEDURE

ARTICLE 13

Contents of Requests

1. In all cases requests for assistance shall include:

   (a) the competent authority conducting the investigation or proceedings to which the request relates;

   (b) a description of the nature of the investigation or proceedings, including a copy or summary of the relevant facts and laws;

   (c) the purpose for which the request is made and the nature of the assistance sought;

   (d) the need, if any, for confidentiality and the reasons therefor; and

   (e) any time limit within which compliance with the request is desired.

2. Requests for assistance shall also contain the following information:

   (a) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;

   (b) where necessary, details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor;

   (c) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested State;

   (d) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence or statement sought;

   (e) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;

   (f) in the case of making detained persons available, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return.

3. If the Requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.

4. A request shall be made in writing. In urgent circumstances or where otherwise permitted by the Requested State, a request may be made orally but shall be confirmed in writing promptly thereafter.

ARTICLE 14

Central Authorities

Central authorities shall transmit and receive all requests and responses thereto for the purposes of this Treaty. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister; the Central Authority for Ukraine shall be the Ministry of Justice.

ARTICLE 15

Confidentiality

1. The Requested State may require, after consultation with the Requesting State, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

2. The Requested State shall to the extent requested keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

ARTICLE 16

Limitation of Use

The Requesting State shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the central authority of the Requested State.

ARTICLE 17

Authentication

Evidence or documents transmitted pursuant to this Treaty shall not require any form of authentication, save as is specified in Article 6 of this Treaty.

ARTICLE 18

Language

Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State.

ARTICLE 19

Consular Officials

1. Consular officials may take evidence in the territory of the receiving state from a witness on a voluntary basis without a formal request. Prior notice of the intended proceedings shall be given to the receiving state. That state may refuse its consent for any reason provided in Article 3 of this Treaty.

2. Consular officials may serve documents on an individual who appears voluntarily at the consular premises.

ARTICLE 20

Expenses

1. The Requested State shall meet the cost of executing the request for assistance,except that the Requesting State shall bear:

   (a) the expenses associated with conveying any person to or from the territory of the Requested State at the request of the Requesting State, and any allowance or expenses payable to that person while in the Requesting State pursuant to a request under Articles 7, 9 or 10 of this Treaty;

   (b) the expenses and fees of experts either in the Requested State or the Requesting State.

2. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

PART IV: FINAL PROVISIONS

ARTICLE 21

Other Assistance

This Treaty shall not derogate from obligations subsisting between the Contracting Parties whether pursuant to other treaties, arrangements or otherwise, or prevent the Contracting Parties from providing or continuing to provide assistance to each other pursuant to other treaties, arrangements or otherwise.

ARTICLE 22

Scope of Application

This Treaty shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

ARTICLE 23

Consultations

The Contracting Parties shall consult promptly, at the request of either Party, concerning the interpretation and the application of this Treaty.

ARTICLE 24

Entry into Force and Termination

1. This Treaty shall enter into force on the first day of the second month after the date on which the Contracting Parties have notified each other that their legal requirements have been complied with.

2. Either Contracting Party may terminate this Treaty. The termination shall take effect one year from the date on which it was notified to the other Contracting Party.

IN WITNESS THEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at Ottawa, on this 23rd day of September 1996, in two copies, in English, French and Ukrainian, each version being equally authentic.

FOR CANADA

FOR UKRAINE