

International Legal Assistance in Criminal Matters Act

(5 January 1994/4)

Chapter 1

General provisions

Section 1

Scope of application

The provisions in this Act shall apply to international assistance in a criminal matter where the proceedings fall, at the time of the request for assistance, within the jurisdiction of a requesting Finnish authority or an authority of the requesting foreign State.

International assistance in criminal matters, as referred to in this Act, shall include:

- 1) service of decisions, summonses, notices and other judicial documents relating to a criminal matter, including summonses to appear before an authority of the requesting State;
- 2) hearing of witnesses, experts and parties, obtaining of expert opinions, inspections, procuring and transmitting documents and objects to be produced as evidence, as well as the taking of any other evidence relating to a criminal matter;
- 3) search, seizure and the use of other coercive measures in order to obtain evidence or to secure the enforcement of a confiscation order;
- 4) institution of criminal proceedings;
- 5) communication of extracts from and information relating to judicial records required in a criminal matter; and
- 6) any other necessary assistance in a criminal matter, provision of information on law as well as any other forms of mutual co-operation.

Section 2

Limitations of the scope of application

This Act shall not apply to:

- 1) extradition;
- 2) international co-operation in the enforcement of criminal judgements, transfer of sentenced persons and transfer of the supervision persons sentenced to conditional

punishment as well as those released on parole, and the enforcement of a sentence of a fine or the enforcement of a confiscation order; nor

3) temporary transfer of a person in custody to appear as a witness or for purposes of confrontation.

Section 3

Central authority

The Ministry of Justice shall act as Central Authority and discharge the duties falling within the scope of application of this Act.

As Central Authority the Ministry of Justice shall:

- 1) receive the requests for assistance transmitted by an authority of a foreign State;
- 2) carry out, either directly or through the competent Finnish authorities, the execution of the requests for assistance transmitted by authorities of a foreign State;
- 3) transmit the requests for assistance by the competent Finnish authorities to authorities of a foreign State; as well as
- 4) carry out translations of documents and to discharge other duties of the Central Authority.

Section 4

Requests for assistance to Finnish authorities

The request for assistance by an authority of a foreign State shall be transmitted to the Ministry of Justice or made directly to the authority competent to execute the request.

Where the request has been sent to the Ministry of Justice, the Ministry shall transmit it promptly to the authority competent to execute the request, unless the execution of the request falls within the competence of Ministry of Justice.

Section 5

Requests for assistance to authorities of a foreign State

A request for assistance may be made by the Ministry of Justice, a court, a prosecution authority and a pre-trial investigation authority.

The request shall be transmitted to the foreign State in compliance with the procedure provided by the foreign State and taking into account the provisions of the treaties in force between Finland and the foreign State. The request may be transmitted through the Ministry

of Justice, where the requesting authority may not transmit it directly to the competent authority of the foreign State or where the transmitting of the request through the Ministry of Justice is otherwise deemed to be appropriate. Where necessary, the Ministry of Justice may transmit the request to the foreign State through the Ministry for Foreign Affairs.

Section 6

Issue of supplementary rules on channels of communication

Supplementary rules on the procedure for making and receiving a request for assistance and on channels of communication shall be issued by Decree.

Chapter 2

Provision of assistance

Section 7

Form and content of requests

A request for assistance transmitted by an authority of a foreign State to a Finnish authority may be made in writing, as a recording or orally; it may also be transmitted in an electronic message. Where the service of summons, notice, decision or other document is requested, the request shall be accompanied or supplemented by the document to be served. Where the authenticity of the request or any accompanying document is doubtful the Ministry of Justice or the competent authority may request for the necessary confirmation in writing. The request and the accompanying documents are exempt from legalisation or any similar formality.

The request shall, to the extent necessary for the proper execution of the request, indicate:

- 1) the authority making the request and the court or other authority where the criminal matter on which the request is based is subject to proceedings or investigations;
- 2) the object of and reason for the request;
- 3) the necessary information available on the persons concerned;
- 4) a description of the offence on which the request is based and the applicable provisions of criminal law;

5) a brief summary of the criminal act and the related facts, except where the service of a document is requested;

6) a description of the evidence sought and the information on documents and evidence; as well as

7) allowances and expenses to which a witness or expert requested to appear before an authority of the requesting State is entitled.

The request may be executed although the requirements provided for in paragraph 1 or 2 are not fully met, where the defects do not prevent the execution of the request.

Section 8

Language and translations

The request and the accompanying documents shall be in Finnish or in Swedish, or be accompanied by a translation into either of these languages. It may be enacted by Decree that the request and the accompanying documents may be in a foreign language.

A competent authority may execute a request for assistance even where the request and the related documents are in a foreign language provided by Decree or in another foreign language, provided that the execution of the request is not otherwise precluded according to this Act. However, the competent authority may refuse to execute the request, where the request and the documents are not in Finnish or in Swedish, nor accompanied by translations into these languages, if the authority deems that it does not have a sufficient understanding of the language used in the documents. The Ministry of Justice shall be responsible for carrying out translations from foreign languages into Finnish and Swedish as will be enacted by Decree.

A document to be served need not be accompanied by a translation where the service may be executed without a translation under section 17, paragraph 2.

Section 9

Execution of requests

The execution of the request shall be carried out in accordance with Finnish law, unless otherwise provided below. The request shall be executed promptly and the time limits set or implied in the request shall as far as possible be observed.

Where the request or the accompanying documents are defective to the extent that the request cannot be executed, the requesting authority of the foreign State shall be promptly requested to supplement the request or to provide additional information.

Where the request cannot be executed or the execution of the request is delayed, the authority of the requesting foreign State shall be promptly notified thereof and be informed of the reasons of the non-compliance or the delay.

Section 10

Presence

The competent authority of the requesting State, the parties as well as any other interested persons shall have the right to be present in accordance with Finnish law when witnesses, experts or parties are heard or another requested measure is carried out. An authority of the requesting State may, subject to the consent of the court or the pre-trial investigation authority, participate in court proceedings and the pre-trial investigation as well as put questions to the persons being examined.

On the request of an authority of the requesting State, the authority of the requesting State shall be notified of the time and place of the execution of requested measure well in advance, so that the authority, the parties and other interested persons may be present.

Section 11

Compliance with a particular procedure specified in the request

The request for assistance may be executed following a particular form or procedure specified in the request where such a form or procedure would not be incompatible with Finnish law.

Where the request cannot be executed in compliance with the procedure specified in the request, the authority of the requesting foreign State shall be promptly notified of the obstacles and inquired whether the request should nevertheless be executed.

Section 12

Mandatory grounds for refusal

Assistance shall be refused, where the execution of the request would prejudice the sovereignty, the security or other essential interests of Finland.

Assistance shall be refused, where the execution of the request would be contrary to the principles of human rights and fundamental freedoms or otherwise contrary to Finnish public policy (*ordre public*).

Section 13

Discretionary grounds for refusal

Assistance may be refused, where:

- 1) the request relates to an offence that is of a political character or an offence under military law only;
- 2) the request relates to an offence, committed by a person who according to Finnish law could no longer be prosecuted by reason of lapse of time, pardon or by any other reason;
- 3) the request relates to an offence which in Finland or in a third State is subject to pre-trial investigations or under consideration of a prosecution authority or where court proceedings have been initiated;
- 4) the request relates to an offence for which the pre-trial investigations, prosecution or punishment, or any other punitive sanctions have been waived in Finland or in a third State;
- 5) the request relates to an offence in respect of which the offender has been sentenced or acquitted in Finland or in a third State; or
- 6) the execution of the request would, having regard to the nature of the offence, impose an unreasonable burden on the resources available.

The execution of the request may be postponed, if the execution of the request would cause inconvenience or delay in a criminal investigation, pre-trial investigations or court proceedings in Finland.

Section 14

Decisions to refuse assistance and appeal

The decision to refuse assistance by virtue of section 12, paragraph 1 shall be made by the Ministry of Justice. In other cases the decision not to comply with the request for assistance shall be made by the authority competent to execute the request. Where the request for assistance has been transmitted to the Ministry of Justice as the Central Authority, the

Ministry may, instead of transmitting the request to the competent authority, decide that assistance shall be refused where it is evident that the request cannot be complied with.

Where the court of first instance has decided not to comply with the request for assistance, the Ministry of Justice may submit the matter to the Court of Appeal. Where the Court of Appeal decides that the assistance requested shall be refused, the Ministry of Justice may directly submit the matter to the Supreme Court. In other cases a decision to the refuse assistance shall not be subject to appeal.

Section 15

Restrictions on coercive measures

Where coercive measures are requested or where the request otherwise involves the use of coercive measures under the Coercive Measures Act (1987/450), such measures shall not be used, where not permitted under Finnish law had the offence to which the request relates been committed in Finland in similar circumstances.

A suspect or a defendant in criminal proceedings pending in the requesting State who is requested to be examined in Finland in pre-trial investigations or in court may not be arrested, detained or subjected to a travel ban for the acts or omissions constituting the offence specified in the request.

Where the request relates to the service of a summons to appear before an authority of a foreign State, a Finnish authority may not order the person summoned to obey the summons nor use any measures of compulsion in cases of failure to appear. The duty of witnesses and other persons to obey a summons issued by a court of another Nordic State is governed by the Act on the Duty to Appear Before the Court of Another Nordic Country in Certain Cases (1975/349).

Section 16

Refusal of assistance due to the absence of reciprocity

The Ministry of Justice may decide that assistance be refused, where the requesting State would not afford corresponding assistance pursuant to a request for assistance made by a Finnish authority.

Chapter 3

Specific provisions on the provision of assistance

Section 17

Service

The service of a document shall be effected in accordance with Finnish law for the service of a corresponding document, or in compliance with a particular method specified in the request, unless such a method would be incompatible with Finnish law. Proof of service shall be given by means of a certificate stating the date, place and method of service, the person on whom the document has been served and the person to whom the document has been delivered.

A document shall be served in accordance with paragraph 1, if the document to be served is in Finnish or in Swedish or accompanied by a translation to either of these languages. In other cases the service may be carried out by delivery of the document to the addressee who accepts it voluntarily. However, the service may be carried out in accordance with paragraph 1, where it is evident that the addressee has a sufficient understanding of the language of the document or the accompanying translation.

Supplementary rules on the service of documents shall be issued by Decree.

Section 18

Refusal to serve a summons

The service of a summons requiring the appearance of a person may be refused, where the summons and the accompanying documents have not been transmitted to the requested Finnish authority by a reasonable time before the date set for appearance. The service may nevertheless be effected, if the person on whom the document is to be served accepts it voluntarily.

Section 19

Request to initiate criminal proceedings

Criminal proceedings may be initiated in Finland in accordance with the rules of Finnish law on the exercise of jurisdiction in criminal cases pursuant to a request made under this Act by an authority of a foreign State.

Section 20

Taking of evidence and obtaining statements of persons in a court of law

Where the request for assistance made by an authority of a foreign State relates to the hearing of witnesses or experts, the production of documents and records, the arrangement of inspections or the production of any other materials to be used as evidence, or the hearing of the parties, and the execution of the request falls within the functions of the judiciary, the evidence shall be taken in the court of first instance where:

- 1) criminal proceedings are pending in a court of the requesting foreign State; or
- 2) it has been requested that the evidence be taken in a court.

The evidence shall be taken in the court of first instance of the district where the person to be examined is domiciled or habitually resident, or where the evidence can otherwise be taken in an appropriate way. A public prosecutor shall be present at the hearing, where deemed necessary by the court. The taking of evidence shall, where applicable, be governed by the Finnish law on proceedings in criminal matters.

Section 21

Taking of evidence and hearing of parties in pre-trial investigations

In cases other than those referred to in section 20 evidence shall be taken and the parties and other persons examined by the competent pre-trial investigation authority. The provisions on the pre-trial investigation of an offence shall otherwise apply to the procedure, where applicable.

Section 22

Refusal to give evidence

A witness or expert who appears before a court or a person who appears before a pre-trial investigation authority pursuant to a request made by an authority of a foreign State, shall be entitled to refuse to give evidence or make a statement, in so far as the person has a privilege or duty to refuse to give evidence or make a statement under Finnish law or the law of the requesting State. The law of the foreign State shall be taken into account, if the privilege or duty to refuse to give evidence has been indicated in the request for assistance made by the foreign State or if such information is supplied by the requesting authority upon the request of a Finnish court or pre-trial investigation authority, or if the privilege or duty otherwise is known to the court or to the pre-trial investigation authority.

Section 23

Use of coercive measures to obtain evidence or to secure the enforcement of a confiscation order

Search and seizure, telecommunications interception, telecommunications monitoring and technical surveillance to obtain evidence as well as identification of persons may be carried out pursuant to a request for assistance made by an authority of a foreign State, if this has been requested or deemed necessary in the execution of the request (changed by Act No 406/1995).

Coercive measures may be used upon the request of an authority of a foreign State for the purpose of securing the enforcement in Finland of a confiscation order made or to be made in the requesting foreign State where the order is, or would be, enforceable in Finland.

The use of coercive measures shall be governed by section 15, paragraph 1 of this Act and by the Coercive Measures Act.

Section 24

Communication of information from judicial records

On the request of an authority of a foreign State information from judicial records may be communicated in criminal matters to the requesting authority in accordance with this Act, under the same conditions as to Finnish authorities. The information from judicial records shall be provided by the Ministry of Justice.

Section 25

Costs and expenses

No payment of the costs or expenses incurred in the execution of the request may be required from the requesting foreign State, unless otherwise provided by Decree.

Chapter 4

Specific provisions on the request for assistance made to a foreign State

Section 26

Declaration of reciprocity

When making a request for assistance to an authority of a foreign State the Ministry of Justice may, where necessary, declare that Finnish authorities will in a corresponding case provide assistance to the requested foreign State.

Section 27

Secrecy, confidentiality and restrictions on the use of information

Where a Finnish authority makes a request for assistance to an authority of a foreign State, the provisions of Finnish law shall apply to the secrecy of documents and other records, confidentiality as well as to access to information by the parties and public authorities.

In addition to paragraph 1, the provisions in a treaty in force between Finland and the foreign State and the conditions set by the foreign State shall apply on secrecy, confidentiality, restrictions on the use of information and the return or destruction of the material provided by the requested State.

Section 28

Refusal to give evidence

A witness or expert who appears before a court or a person who appears before a pre-trial investigation authority pursuant to a request made by a Finnish authority, shall be entitled to refuse to give evidence or make a statement, in so far as the person has a privilege or duty to refuse to give evidence or make a statement under Finnish law or the law of the requested foreign State. The law of the foreign State shall be taken into account, if the privilege or duty has been indicated in the reply made by the authority of the foreign State to the request by the Finnish authority, or if such information is supplied by the requested upon the request of a Finnish court or pre-trial investigation authority, or if the privilege or duty is otherwise known by the court or the pre-trial investigation authority.

The immunity of witnesses, experts, parties, or persons to be examined in pre-trial investigations, who appear pursuant to a request for assistance under this Act by a Finnish authority shall be governed by the Immunities of Persons Participating in Proceedings or Pre-trial Investigations Act (1994/11).

Chapter 5

Supplementary rules and instructions and the entry into force of the Act

Section 29

Supplementary rules and instructions

Supplementary rules on the implementation and application of this Act shall be issued by Decree. In addition, the Ministry of Justice may, where necessary, issue instructions on international assistance in criminal matters.

Section 30

Entry into force

This Act shall enter into force on the 15th day of January 1994.

Nothing in this Act shall prevent Finnish authorities from affording international assistance in criminal matters pursuant to other treaties or other arrangements to which Finland is or becomes a Party, nor under any other provisions of Finnish law relating to the subject-matter of this Act.

The provisions in this Act shall not affect the transmission of requests between Finnish authorities and the authorities of a foreign State through the International Criminal Police Organisation (*Interpol*) or through diplomatic channels.