

Decree on International Legal Assistance in Criminal Matters

(13/1994)

Chapter 1— Transmitting and making of requests

Section 1—Requests for service of documents

- (1) A request by an authority of a foreign State to effect service referred to in section 1(2)(1) of the Act on International Assistance in Criminal Matters (*the Act*) (4/1994), may be transmitted to the Ministry of Justice or made directly to the district court competent to effect the service.
- (2) Where an authority of a foreign State requests the service in Finland of a summons on a witness or an expert to appear in the court of the requesting State and requests an advance payment of expenses and allowances to be made to the person summoned on behalf of the requesting State, the request shall be transmitted to the Ministry of Justice.
- (3) Service in Finland shall be effected by the Ministry of Justice or the district court as provided for in this Decree.

Section 2—Requests for the taking of evidence

A request by an authority of a foreign State for the taking of evidence, referred to in section 1(2)(2) of the Act, may be transmitted to the Ministry of Justice or submitted directly to the competent court referred to in section 20(2) of the Act. Where the taking of evidence according to section 21 of the Act falls within the competence of a pre-trial investigation authority, the request may be made directly to this authority.

Section 3—Communication of information from criminal records

A request by an authority of a foreign State for the communication of information from criminal records under section 1(2)(5) and section 24 of the Act shall be transmitted to the Ministry of Justice.

Section 4—Information on Finnish law

A request by an authority of a foreign State to obtain information on Finnish law shall be transmitted to the Ministry of Justice.

Section 5—*Requests relating to other assistance or co-operation*

A request by an authority of a foreign State for other assistance or co-operation referred to in section 1(2)(6) of the Act, may be transmitted to the Ministry of Justice or made directly to the authority competent to provide the requested assistance or co-operation.

Section 6—*Transmission of requests through diplomatic or consular channels*

Requests by authorities of a foreign State may also be transmitted to the Finnish authorities referred to above through diplomatic channels or submitted directly to Finnish authorities by a diplomatic agent or consular officer posted in Finland.

Section 7—*Notification of the refusal of assistance*

Where a district court has refused to provide the assistance requested, the court shall promptly notify the Ministry of Justice of its decision and a copy of the decision shall be annexed to the notification.

Section 8—*Transmission of replies and notifications to foreign authorities*

- (1) Replies to the requests for assistance made by authorities of foreign States, notifications relating to the execution of the request as well as requests to supplement the request and additional inquiries and accompanying documents shall be transmitted to the authority of the requesting foreign State in the manner followed in the transmission of the request, unless another procedure has been requested or is obviously expected to be followed or unless otherwise enacted or agreed.
- (2) Where the request has been transmitted by an authority other than that having made the request for assistance, the replies, notifications and requests to supplement the request shall in urgent cases be sent or made directly to the authority having made the request, and the authority having transmitted the request shall be duly informed.

Section 9—*Language to be used in the request and accompanying documents*

A request made by an authority of a foreign State and the documents accompanying the request may, in place of Finnish or Swedish, be in Danish, English, French, German or Norwegian.

Section 10— *Translations*

- (1) Where a request made by an authority of a foreign State or documents accompanying the request are in a language referred to in section 9, other than Finnish or Swedish, the necessary parts of the documents shall be translated into Finnish or Swedish if the requested service or other measure cannot otherwise be carried out under Finnish law or if the translation is necessary for the reason that the authority executing the request does not consider itself to have a sufficient command of the language used in the request.

- (2) The Ministry of Justice shall be responsible for providing the translations unless this responsibility, as separately enacted, shall be deemed to lie with another authority.
- (3) The Ministry of Justice shall further be responsible for providing the necessary translations of replies, notifications and inquiries made by Finnish authorities in the execution of the requests and to be transmitted to the authorities of a foreign State, as well as for providing translations of requests by Finnish authorities to the authorities of foreign States, and of the documents accompanying such requests.

Chapter 2— **Service of documents in Finland**

Section 11— *Competent authorities*

- (1) The service of a summons in criminal proceedings on a defendant, complainant, witness or expert shall be effected by the district court as provided for in chapter 11, section 1(2) of the Code of Judicial Procedure, unless otherwise indicated in the request.
- (2) In cases other than those mentioned in paragraph (1), service shall be effected by the Ministry of Justice or by the district court.
- (3) Service shall be effected by the district court of the district where the addressee is resident or by the court which otherwise may expediently effect the service. Where the request has been transmitted to a court other than that bound to effect the service, that court shall promptly transmit the request and the accompanying documents to the competent court, unless the court considers that it may itself effect the service.

Section 12— *Request for making an advance payment to a witness or expert*

- (1) Where an authority of a foreign State in accordance with section 1 paragraph 2 has requested an advance to be paid to a witness or expert, the Ministry of Justice shall decide whether the advance shall be paid and determine the amount to be paid in advance. The Ministry of Justice shall be responsible for the recovery of the paid advance from the requesting State.
- (2) Where the Ministry of Justice has decided that an advance shall be paid, it shall transmit the decision and the summons to the district court to be served on the addressee. Upon the request of the addressee the court shall order the advance to be paid, where applicable, according to the provisions of the State Compensation for Witnesses Act (666/1972). Where the person having received the advance has failed to appear, the court shall order the advance to be refunded.

Section 13— *Methods of service*

- (1) Service may be effected by a method indicated in the request or:
 - (1) by service in person on the addressee as provided for in chapter 11, section 4 of the Code of

Judicial Procedure;

- (2) by sending the documents to be served by post and issuing a certificate on receipt of documents or by a letter as provided for in chapter 11, section 3 of the Code of Judicial Procedure; or
 - (3) by electronic message where it can be ensured with sufficient reliability that the addressee will have access to the information relating to the document
- (2) Summons in criminal proceedings on a defendant, complainant, witness or expert shall be served in person, as provided for in paragraph (1)(1), unless otherwise indicated in the request.

Section 14— *Failure to effect service*

Where service cannot be effected because the whereabouts of the addressee are unknown, the addressee is not present in Finland or for any other reason, the authority of the requesting foreign State shall be promptly notified thereof stating the reasons that have prevented the execution of the request. The authority shall at the same time also be asked whether the service is to be effected by a public notice as provided for by chapter 11, section 10 of the Code of Judicial Procedure, or in another corresponding manner.

Section 15— *Period to enable the defendant to defend*

- (1) Where the request for service relates to the service of summons on a defendant to appear in criminal proceedings before a court of a foreign State, the authority which is to effect the service may refuse to serve the summons if the request and the accompanying documents have not been transmitted to that authority not less than 30 days before the date set for appearance.
- (2) Before the service is refused, the addressee shall be notified of the contents of the request and of the summons. Subject to the consent of the addressee, service shall be effected despite the delayed delivery of documents.

Section 16— *Certificate of service*

- (1) The certificate that service has been effected shall be issued by the Ministry of Justice or by the district court having served the document.
- (2) The certificate shall be in the form prescribed by the Ministry of Justice.

Section 17— *Service by consular officers*

Service in Finland may also be effected directly by a consular officer of a foreign State or by a diplomatic agent of a foreign State performing consular functions. Coercive measures or any compulsion or sanctions shall not be used when effecting service.

Chapter 3— **Summons to persons to appear from abroad in a Finnish court**

Section 18— *Decision on summons*

- (1) A court may, upon its own initiative or upon request by the public prosecutor, pre-trial investigation authority or a party, decide that a witness or expert who is present in a foreign State shall be summoned to appear in criminal proceedings pending in that court or to be examined in a Finnish court for the purposes of criminal investigations under way in Finland.
- (2) When making a decision on the issuance of summons the court shall consider whether appearance in person in a Finnish court is to be deemed necessary from the point of view of the consideration of the case, having regard to the costs and expenses incurred by the appearance, the particulars of the case as well as the possibilities of arranging the examination of the witness or expert in the foreign State concerned.
- (3) The issuance of summons upon a witness or expert present in another Nordic country to appear in criminal proceedings pending in Finland is subject to the Act on the Duty to Appear Before the Court of Another Nordic Country in Certain Cases (349/1975).

Section 19— *Information on privileges and immunities*

The summons to be served on a witness or an expert shall contain a notice that the addressee is entitled to refuse to give evidence or make a statement, as provided for by section 28 of the Act on International Legal Assistance in Criminal Matters, and entitled to immunity under the Immunities of Persons Participating in Proceedings or Criminal Investigations Act (11/1994).

Section 20— *Allowances and expenses*

- (1) A witness and an expert summoned according to section 18 in a foreign State shall be entitled to a reasonable reimbursement from State funds for necessary travel and subsistence expenses and financial loss as provided for by the State Compensation to Witnesses Act.
- (2) The summons to be served on a witness or an expert shall contain a notice of the estimated amount to be paid for the reimbursement of expenses.

Section 21— *Advance payment*

- (1) The court may order that a witness or an expert summoned in a foreign State shall be paid an advance as provided for by sections 11—14 of the State Compensation to Witnesses Act.
- (2) Where the court has ordered the advance to be paid to the witness or expert, the court shall transmit the summons and the notice of the advance to be paid to the competent authority of the foreign State for the purpose of service upon the addressee as well as take any necessary measures of practical nature relating to the summons.

- (3) Where a witness or an expert duly summoned fails to appear or otherwise neglects to perform his or her duties under the summons, the court shall order the advances paid to be refunded as provided for by section 15 of the State Compensation to Witnesses Act. Notification of such a decision shall be made to the Ministry of Justice, which if necessary, shall undertake measures for reimbursement of the advance from a foreign State.

Section 22— *Summons to be served upon the complainant*

The provisions on summons to a witness and an expert to appear in a Finnish court shall, where applicable, also apply to summons to a complainant to appear in person, if the appearance in person in a Finnish court shall be considered to be of particular importance.

Section 23— *Entry into force*

This Decree shall enter into force on 15 January 1994.