

N° 3662.

SUISSE ET TURQUIE

Convention réglant les rapports judiciaires en matière civile et commerciale entre les deux pays. Signée à Ankara, le 1^{er} juin 1933.

SWITZERLAND AND TURKEY

Convention concerning Judicial Relations in Civil and Commercial Matters between the Two Countries. Signed at Ankara, June 1st, 1933.

¹ TRADUCTION. — TRANSLATION.

No. 3662. — CONVENTION ² CONCERNING JUDICIAL RELATIONS IN CIVIL AND COMMERCIAL MATTERS BETWEEN SWITZERLAND AND TURKEY. SIGNED AT ANKARA, JUNE 1ST, 1933.

French official text communicated by the Swiss Federal Council. The registration of this Convention took place June 12th, 1935.

THE SWISS FEDERAL COUNCIL
and

THE PRESIDENT OF THE TURKISH REPUBLIC,

Being desirous of regulating the judicial relations in civil and commercial matters between Switzerland and Turkey, have resolved to conclude a Convention on the subject, and have for this purpose appointed their respective Plenipotentiaries, namely :

THE SWISS FEDERAL COUNCIL :

Monsieur Henri MARTIN, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation in Turkey ;

THE PRESIDENT OF THE TURKISH REPUBLIC :

Menemenli NUMAN Bey, Minister Plenipotentiary of the First Class, Under-Secretary of State at the Ministry of Foreign Affairs.

These Plenipotentiaries, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

I. SECURITY FOR COSTS.

Article 1.

Nationals of one Contracting State, domiciled in Switzerland or Turkey, who come as plaintiffs or interveners before the Courts of the other Contracting State, may not be required, on the ground of their being aliens or of not being domiciled or resident within the country, to give sureties or make deposits of any description.

The same rule shall apply to payments required of plaintiffs or interveners to guarantee judicial costs.

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

¹ Translated by the Secretariat of the League of Nations, for information.

² The exchange of ratifications took place at Berne, May 7th, 1935. Came into force June 8th, 1935.

Article 2.

Orders to pay judicial costs and charges made in one of the Contracting States against a plaintiff or intervener who is exempted from the sureties or deposits or payments in virtue of Article 1 or of the law of the country in which the action is brought, shall, on a request made through the diplomatic channel, be made enforceable free of charge by the competent authority of the other State.

The same rule shall apply to judicial decisions under which the amount of the costs is left to be fixed at a later date.

Article 3.

Decisions with regard to costs and charges shall be declared enforceable without the parties being heard, but subject to subsequent appeal by the party mulcted in the costs, in conformity with the laws of the country in which the order of the Court is enforceable.

The authority competent to decide on an application for enforcement shall consider solely :

(a) Whether the order has acquired the force of *res judicata* under the law of the country in which it is made ;

(b) Whether the material part of the order is accompanied by a translation in the language of the authority applied to, certified correct by a diplomatic or consular officer of the State making the application, or by a sworn translator of the State making the application or of the State applied to.

A declaration by the competent authority of the State making application to the effect that the order has acquired the force of *res judicata* shall be sufficient to constitute compliance with the condition laid down in paragraph 2 (a) of this Article. The competence of such authority shall be certified by the highest official responsible for the administration of justice in the State making application. The declaration, certified as above, shall be translated in conformity with paragraph 2 (b).

The authority competent to decide on an application for enforcement shall indicate, if the party so requests at the time, the amount of the costs of translation and legalisation for which paragraph 2 (b) provides. Such costs shall be regarded as part of the judicial costs and charges of the case.

II. FREE LEGAL AID.

Article 4.

Nationals of one Contracting State shall be entitled in the other Contracting State to free legal aid in the same way as the nationals of that State, if they conform to its legislation.

Article 5.

The certificate of indigence shall be issued by the authorities of the habitual place of residence of the applicant, or, in their absence, by the authorities of his place of residence at the time of applying. If the applicant does not reside in one of the Contracting States, a certificate issued by a diplomatic or consular officer of the country to which the applicant belongs shall be sufficient.

If the applicant does not reside in the country in which the request is made, the certificate of indigence shall be legalised free of charge by a diplomatic or consular officer of the State in which the document has to be produced.

Article 6.

The authority empowered to issue the certificate of indigence may request the authorities of the other State to supply information as to the means of the applicant.

The authority competent to decide on an application for free legal aid shall be entitled, within the limit of his powers, to verify the certificate and particulars supplied to him by the authorities of the other State, and to require further particulars if he considers this necessary.

III. RECIPROCAL JUDICIAL ASSISTANCE.

Article 7.

In civil and commercial matters, the service of documents issued by the authorities of one Contracting State and addressed to persons residing in the territory of the other State shall be effected on the request of the diplomatic or consular representative of the State making application addressed to such authority as may be designated by the State applied to. The request shall mention the authority by whom the document transmitted is issued, together with the names and descriptions of the parties, the address of the recipient and the nature of the document, and shall be drawn up in the language of the authority applied to. A legalised translation of the document for service shall be attached to the request.

The authority to whom the request is addressed shall forward to the diplomatic or consular representative the papers proving service or indicating the circumstances preventing service. If he is not himself the authority locally competent to deal with the request, he shall transmit it of his own motion to the proper authority, at the same time informing the diplomatic or consular representative of the action taken.

Article 8.

Service shall be effected by the competent authority of the State applied to. Save in the cases for which provision is made in the second paragraph of this Article, it shall be sufficient for the competent authority to serve the document by delivery to the recipient, provided the latter declares his willingness to receive it.

If the authority making application so requests, service shall be effected by the authority applied to in the manner laid down for such service by the municipal law of the State applied to, or in any special manner not incompatible with such law.

Article 9.

Proof of service shall be furnished either by a dated and signed receipt from the recipient or by an attestation of the authority of the State applied to, stating the fact, manner and date of the service.

Article 10.

In civil and commercial matters, the judicial authority of one Contracting State may apply, in conformity with the law of his own State, by letters of request to the competent authority of the other State for the institution by the latter within his own jurisdiction of preliminary or other judicial proceedings.

Letters of request shall be transmitted, by the diplomatic or consular representative of the State making application, to such authority as may be designated by the State applied to. He shall attach a translation in the language of the authority applied to. This translation shall be certified correct by a diplomatic or consular officer of the State making application, or by a sworn translator of the State making application or of the State applied to.

The authority to whom letters of request are addressed shall forward to the diplomatic or consular representative the documents proving execution of the letters of request or shall inform

him of the circumstances that have prevented execution. If he is not himself the authority locally competent to deal with letters of request, he shall transmit them of his own motion to the proper authority and shall at once inform the diplomatic or consular representative thereof.

Article 11.

The judicial authority to whom letters of request are addressed shall be under obligation to comply therewith, and to resort to the same measures of compulsion as would be employed in the execution of letters of requests emanating from the authorities of his own country. Such measures of compulsion shall not be obligatory where the appearance in person of the parties to the dispute is concerned.

As regards the procedure to be adopted in connection with the execution of letters of request, the authority applied to shall follow the laws of his own country. He may, however, proceed in conformity with special rules in order to comply with a request from the State making application, when such procedure is not contrary to the law of the State applied to.

The authority making application shall be informed, if he so requests, of the date and place of execution of letters of request, in order that the party concerned may be enabled to be present at the proceedings.

Article 12.

Any difficulties arising in connection with an application by a diplomatic or consular representative for service of a document, or execution of letters of request transmitted by him, shall be settled through the diplomatic channel.

Article 13.

The service of a document or the execution of letters of request may be refused if the State in whose territory the service or execution is to take place considers that it might compromise its sovereignty, its security, or public order. The execution of letters of request may also be refused if the authenticity of the document is not established, or if the execution does not come within the powers of the judicial authorities within the territory of the State applied to.

Article 14.

No costs or fees of any description may be required in respect of the service of documents or execution of letters of request.

Nevertheless, the State applied to shall have the right to require the State making application to refund :

- (a) Allowances paid to witnesses or experts ;
- (b) Costs occasioned by the employment of the services of a legal officer to secure the attendance of a witness who has not appeared voluntarily ;
- (c) Costs arising out of the use of a special procedure for the service of documents or the execution of letters of request.

Article 15.

Either Contracting State shall be entitled to have documents served by its diplomatic or consular representatives on its own nationals within the territory of the other State directly and without resort to compulsion. In the event of difficulties arising in the application of this Article, recourse shall be had to the procedure laid down in Article 7.

IV. FINAL PROVISIONS.

Article 16.

The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

It shall come into force one month after the exchange of the instruments of ratification and shall remain in force for six months from the date of its denunciation, which may take place at any time.

In faith whereof the Plenipotentiaries have signed the present Convention and have thereto affixed their seals.

Done at Ankara, the 1st day of June, 1933.

(L. S.) (*Signed*) Henri MARTIN.

(L. S.) (*Signed*) M. NUMAN.