

No. 581

**IRAQ
and
TURKEY**

Convention in respect of legal assistance, in civil, penal and commercial matters. Signed at Ankara, on 29 March 1946

Arabic, Turkish and French official texts communicated by the Minister of Foreign Affairs of Iraq and the Permanent Representative of Turkey to the United Nations. The registration took place on 15 September 1949.

**IRAK
et
TURQUIE**

Convention en matière d'assistance judiciaire, civile, pénale et commerciale. Signée à Ankara, le 29 mars 1946

Textes officiels arabe, turc et français communiqués par le Ministre des affaires étrangères de l'Irak et le représentant permanent de la Turquie auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 15 septembre 1949.

TRANSLATION — TRADUCTION

No. 581. CONVENTION¹ BETWEEN THE KINGDOM OF IRAQ AND THE TURKISH REPUBLIC IN RESPECT OF LEGAL ASSISTANCE, IN CIVIL, PENAL AND COMMERCIAL MATTERS. SIGNED AT ANKARA, ON 29 MARCH 1946

His Majesty King FEISAL II of Iraq,

and

His Excellency ISMET INÖNÜ, President of the Turkish Republic,

desirous of regulating the relations of their two countries in respect of legal assistance in civil, penal and commercial matters, have decided to conclude a Convention for this purpose and have appointed as their Plenipotentiaries:

His Majesty FEISAL II, King of Iraq;

His Excellency al Farik Nuri ESSAID, President of the Senate, Order of Rafidain, First Class,

His Excellency Abdul Ilah HAFIDH, Member of the Chamber of Deputies;

His Excellency ISMET INÖNÜ, President of the Turkish Republic:

His Excellency Hasan SAKA, Deputy of Trabzon, Minister for Foreign Affairs,

His Excellency Feridun Cemal ERKIN, Secretary-General of the Ministry of Foreign Affairs, Ambassador of Turkey,

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

¹ Came into force on 25 May 1948, in accordance with article 27, the instruments of ratification having been exchanged at Baghdad on 10 May 1948.

CHAPTER I.—LEGAL ASSISTANCE IN RESPECT OF CIVIL AND COMMERCIAL MATTERS

Article 1

1. Nationals of one of the Contracting Parties in the territory of the other shall enjoy the same treatment as nationals as regards the legal and judicial protection of their persons and property.

2. They shall have free access to the courts and may institute proceedings under the same conditions and subject to the same formalities as nationals.

Article 2

1. Nationals of one Party, domiciled in the territory of the other Party, and appealing as plaintiffs or interveners before that Party's courts, shall not be required to give any surety or make any deposit under any denomination whatsoever, by reason either of their being foreigners, or of their not being domiciled or resident in the country.

2. The same applies to advances which plaintiffs or interveners may be required to make in order to cover the costs of the action.

Article 3

1. Where an order to pay the costs of an action is made in the territory of one of the Contracting States against a plaintiff or intervener exempted from giving surety or making a deposit or any other payments, such order shall without charge be made executory by the competent authority of the other Party.

2. Applications for this purpose shall be made through the diplomatic channel or shall be addressed directly to the competent authority by the person concerned.

Article 4

Decisions regarding costs referred to in article 3 shall, unless a subsequent appeal is lodged by the losing party, be executed without the two parties being heard in conformity with the law of the country where the execution is made.

In deciding an application for execution, the competent legal authority shall confine itself to ascertaining whether, under the law of the country where judgment was pronounced, the decision has the force of *res judicata*. Such application should be accompanied by the following documents:

(a) Text of the judgment and a translation thereof into the language of the State to which application is made, or into French, certified correct by

the diplomatic or consular agent of the State making application or by a sworn translator of one of the two States.

(b) A statement by the competent authority of the State making application certifying that the decision has the force of *res judicata*. The competence of the said authority shall be certified by the Ministry of Justice of the said State, and the certificate and statement in question shall be translated in conformity with the provisions of the preceding paragraph.

The competent authority, in deciding an application for execution, shall also estimate, if the party so requests at the time of the application, the costs of translation and certification provided for in the present article. These costs shall be included in the costs of the case.

Article 5

The nationals of each of the Contracting States shall be granted free legal aid in the territory of the other State under the same conditions as nationals.

Article 6

If the applicant is not resident in the country where the application for free legal aid is made, he may obtain a certificate concerning his income.

This certificate shall be delivered to the applicant by the competent authority of the country in which he is resident and, if the applicant resides in his own country, the certificate shall be legalized free of charge by the diplomatic or consular agent of the country in which it is to be presented.

If the applicant is resident in the territory of a third State, a certificate issued by the competent diplomatic or consular agent of the State to which he belongs shall be sufficient.

Article 7

The authority appointed to deal with the application for legal aid retains, within the limit of its competence, the right to verify the accuracy of the certificate and the information furnished, and to obtain supplementary information in order to acquire a fuller understanding of the case.

Article 8

When legal aid has been granted to the party to a case by the competent authority of one of the Contracting States, it shall continue to be granted in

all legal proceedings connected with the same case before the legal authorities of the other Contracting State in conformity with the provisions of the present Convention.

Article 9

1. In civil or commercial cases, the service of documents emanating from the authorities of one of the Contracting States and intended for persons resident in the territory of the other, shall be made, upon request, through the diplomatic channel.

The request should indicate the authority from which the document emanates, the surnames, professions and descriptions of the two parties, the address of the recipient, and the nature of the document in question, and should be drawn up in the language of the State to which application is made or in French. A certified correct translation of the document shall be attached to the request.

2. The authority to which application is made shall forward to the diplomatic agent a statement reporting service of the document or the reason for failure to serve it.

Article 10

1. Service shall be effected by the competent authority of the State to which application is made in the manner prescribed by the law of that State.

2. Proof of service shall be furnished, either by a receipt dated and signed by the recipient, or by a certificate from the authorities of the State to which application was made, setting forth the fact, the date and the manner of such service.

Article 11

1. In civil or commercial matters, the legal authorities of one of the Contracting States may, in conformity with its legislation, make application by letters rogatory to the competent authority of the other State, requesting it to proceed within its judicial area to the issue of a warrant for preliminary investigation or for any other form of legal proceedings.

2. Letters rogatory shall be transmitted through the diplomatic channel. They shall be accompanied by a translation into the language of the State to which application is made or into French.

This translation shall be certified correct by a diplomatic or consular agent of the State making application or by a sworn translator of one of the two Contracting States.

3. The authority to which the letters rogatory are addressed shall send to the diplomatic agent a statement reporting the execution of the letters rogatory or indicating the reason for non-execution. If the authority in question is not competent *ratione loci*, it shall of its own motion transmit the letters rogatory to the competent authority and shall inform the diplomatic agent of this fact.

Article 12

1. The legal authority to which the letters rogatory are addressed shall be obliged to comply with them, using the same measures of compulsion as for the execution of letters rogatory emanating from the authorities of its own country. These measures of compulsion shall not necessarily be employed for summoning parties to the case.

2. As regards the procedure to be followed when executing letters rogatory, the authority to which application is made shall apply the law of its own country.

3. The authority making application shall be informed, if it so requests, of the date and place of execution of the letters rogatory in order that the interested party may be able to attend.

Article 13

Any difficulties arising in connexion with the service of a document requested by a diplomatic agent or in connexion with letters rogatory transmitted by such agent, shall be settled through the diplomatic channel.

Article 14

The service of documents or the execution of letters rogatory may be refused if the State in whose territory the service or execution is to take place considers them to be such as to endanger its sovereignty, security or public order.

Execution of letters rogatory may also be refused if the authenticity of the document is not established or if, in the territory of the States to which application is made, such execution does not fall within the functions of the judiciary.

Article 15

1. No expenses shall be refunded in respect of the service of documents and of the execution of letters rogatory.

2. The State to which application is made shall, however, have the right to require the State making application to refund allowances paid to witnesses and experts, together with the costs arising out of the intervention of an officer of justice or of a notary, where such intervention is rendered necessary by the failure of a witness to appear voluntarily.

Article 16

Each of the Contracting States shall be entitled to have judicial acts served directly and without compulsion on its nationals in the territory of the other by its diplomatic and consular agents.

Article 17

Each of the Contracting Parties shall furnish, at the request of the legal authorities of the other Party, transmitted through the diplomatic channel, the legislative texts in force in its territory and any other necessary legal information.

CHAPTER II.—LEGAL ASSISTANCE IN RESPECT OF PENAL MATTERS

Article 18

The Contracting Parties undertake in criminal matters, to afford each other mutual assistance in the following cases:

- (a) The service of all judicial documents, particularly summonses;
- (b) The execution of letters rogatory concerning the hearing of accused persons, witnesses and experts;
- (c) The execution of other judicial documents, such as warrants for search, investigation and seizure.

Article 19

Applications for mutual legal assistance shall be subject to the formalities prescribed by the law of the State to which application is made. The authorities of that State shall apply the same measures of compulsion as in the case of similar applications from the authorities of their own country.

If the request cannot be complied with, the reasons therefore shall be communicated to the State making application.

Article 20

When a summons is served, the authorities of the State to which application is made shall ask the person summoned whether he intends to comply with the terms of the summons, and shall transmit his reply to the State making application.

A witness or an expert who, upon a summons served by the authorities of the State to which application is made, consents to appear before the authorities of the State making application, may not, whatever his nationality, be prosecuted or punished as the author of the offence with which the proceedings are concerned, nor upon the charge of complicity of receiving, or for any other act committed previous to the time when he left the territory of the State making application. Nor may such person be subject to restriction of his personal liberty for any other previous judicial cause.

This clause, however, ceases to apply in cases where the person summoned has not, within a week from the date of his hearing, and from the date when he would have been able to leave the country, left the territory of the State making application.

Article 21

In the following cases there is no obligation to provide mutual assistance:

- (a) When the offence in respect of which legal assistance is applied for does not entail extradition under the terms of the convention relating to extradition;
- (b) When the State to which application is made considers that the application is such as to endanger its sovereignty or security;
- (c) When the request for legal assistance is made in respect of a matter which is purely political or military.

Article 22

The Contracting States shall inform each other of sentences which have attained the force of *res judicata*, pronounced by the courts of either Party upon the nationals of the other and which are to be entered in the judicial records, in accordance with the regulations of the State where sentence was passed.

The documents thus transmitted shall specify the civil status of the convicted person, the court which pronounced sentence, the offence, the date of conviction and the penalties imposed.

Article 23

The costs incurred by the authorities of the State to which application is made as a result of the granting of mutual legal assistance in accordance with the provisions of the present Convention shall be defrayed by that State.

The same applies where the desired action has not been taken in response to an application for mutual assistance.

Article 24

Applications for mutual legal assistance as provided for in the present chapter shall be made through the diplomatic channel.

Article 25

Documents to be transmitted in accordance with the provisions of the present chapter shall be drawn up in the form prescribed by the law of the State making application, and shall be accompanied by a translation into the language of the State to which application is made or into French. This translation shall be certified correct by the diplomatic agent of the State making application or by a sworn translator.

Article 26

Each Contracting Party shall furnish, at the request of the legal authorities of the other Party, transmitted through the diplomatic channel, the legislative texts in force in its territory and any other necessary legal information.

It is understood that the legal question concerning which explanations are desired shall be clearly stated.

Article 27

The present Convention, which shall enter into force fifteen days after the exchange of the instruments of ratification, shall remain in force for one year. If neither of the Parties notifies the other of its desire to denounce the Convention six months before expiry of this period, it shall be considered as having been extended by tacit consent for an indeterminate period and shall remain in force until six months after the notification provided for above.

This Convention shall be ratified and the instruments of ratification exchanged at Baghdad as soon as possible.

DONE at Ankara, 29 March 1946, in three copies, in Arabic, Turkish and French, the latter being authentic in case of dispute.

Noury SAÏD

A. HAFIDH

Hasan SAKA

Feridun Cemal ERKIN
