

No. 4173

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**AUSTRIA, BELGIUM, DENMARK,  
FEDERAL REPUBLIC OF GERMANY,  
FINLAND, etc.**

**Convention relating to civil procedure. Done at The  
Hague, on 1 March 1954**

*Official text: French*

*Registered by the Netherlands on 12 February 1958.*

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**AUTRICHE, BELGIQUE, DANEMARK,  
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE,  
FINLANDE, etc.**

**Convention relative à la procédure civile. Faite à La  
Haye, le 1<sup>er</sup> mars 1954**

*Texte officiel français.*

*Enregistrée par les Pays-Bas le 12 février 1958.*

[TRANSLATION<sup>1</sup> — TRADUCTION<sup>2</sup>]No. 4173. CONVENTION<sup>3</sup> RELATING TO CIVIL PROCEDURE. DONE AT THE HAGUE, ON 1 MARCH 1954

The Signatories of this Convention,

Desiring, in the light of experience, to improve the Convention of 17th July, 1905<sup>4</sup> relating to civil procedure ;

Have resolved to conclude a new Convention for this purpose and have agreed upon the following provisions :

## I. SERVICE OF WRITS AND EXTRA-JUDICIAL DOCUMENTS

*Article 1*

In civil or commercial matters, the service of documents on persons abroad shall be effected in the contracting States at the request of the Consul of the requesting State, such request being addressed to the authority designated by the requesting State. The request, specifying the authority from which the document transmitted emanates, the names and capacity of the parties, the address of the addressee, and the nature of the document in question, must be drawn up in the language of the requested authority. That authority shall transmit to the consul a certificate showing that the document has been served or giving the reason why it could not be served.

Any difficulties arising in connection with the request of the consul shall be settled through diplomatic channels.

<sup>1</sup> Translation provided by the Government of the Netherlands.

<sup>2</sup> Traduction transmise par le Gouvernement des Pays-Bas.

<sup>3</sup> In accordance with the terms of article 28, the Convention came into force on 12 April 1957, the sixtieth day following the deposit of the fourth instrument of ratification with the Ministry of Foreign Affairs of the Netherlands. For each signatory State ratifying thereafter, the Convention will come into force on the sixtieth day following the date of the deposit of its instrument of ratification.

The following is a list of the States parties to the Convention, indicating the respective dates of deposit of the instrument of ratification and of entry into force of the Convention :

	<i>Date of deposit</i>		<i>Date of entry into force</i>	
Austria . . . . .	1 March	1956	12 April	1957
Luxembourg . . . . .	3 July	1956	12 April	1957
Finland . . . . .	8 January	1957	12 April	1957
Italy . . . . .	11 February	1957	12 April	1957
Switzerland . . . . .	6 May	1957	5 July	1957
Sweden . . . . .	21 December	1957	19 February	1958

<sup>4</sup> De Martens, *Nouveau Recueil général de Traités*, troisième série, tome II, p. 243 ; League of Nations, *Treaty Series*, Vol. L, p. 180 ; Vol. LIV, p. 434 ; Vol. XCII, p. 420, and Vol. C, p. 265 ; and United Nations, *Treaty Series*, Vol. 216, p. 432.

Each contracting State may declare, in a communication to the other contracting States, that it desires that requests for the service of documents in its territory, containing the items mentioned in paragraph 1, be addressed to it through the diplomatic channel.

Nothing in the foregoing provisions shall prevent two contracting States from agreeing to permit direct communication between their respective authorities.

#### *Article 2*

Service shall be effected through the authority competent under the laws of the requested State. Except in the cases specified in Article 3, that authority may limit the act of serving to delivery of the document to an addressee who will accept it voluntarily.

#### *Article 3*

The request shall be accompanied by two copies of the document to be served.

If the document to be served is drawn up either in the language of the requested authority or in the language agreed between the two States concerned, or if it is accompanied by a translation in one of these languages, the requested authority, should a desire to that effect be expressed in the request, shall cause the document to be served in the manner prescribed in such cases by its domestic legislation, or in a special manner, provided this does not conflict with such legislation. If no such desire is expressed, the requested authority shall first attempt to serve the document in the manner prescribed in Article 2.

In the absence of agreement to the contrary, the translation referred to in the preceding paragraph shall be certified as accurate by the diplomatic or consular agent of the requesting State or by a sworn translator of the requested State.

#### *Article 4*

Service in accordance with Articles 1, 2 and 3 may be refused only if the State in whose territory it is to be effected deems it likely to prejudice its sovereignty or security.

#### *Article 5*

Proof of service shall be given either by a dated authenticated receipt from the addressee or by an attestation by the authority of the requested State, stating that the document has been served and specifying the manner and the date of service.

The receipt or attestation must be written on one of the copies or be attached thereto.

*Article 6*

The provisions of the preceding articles shall be without prejudice to :

1. the right to mail documents direct to interested parties who are abroad ;
2. the right of interested parties to have documents served directly through law officials or other competent officials of the country of destination ;
3. the right of each State to have documents addressed to persons abroad served directly through its diplomatic or consular agents.

In each of the above cases the right in question shall be deemed to exist only if it is recognised in Conventions between the States concerned or if, in default of such Conventions, the State in whose territory service is to be effected does not object. This State may not object when, in the cases mentioned in paragraph 1, sub-paragraph 3, the document is to be served on a national of the requesting State without duress.

*Article 7*

Service of documents shall not give rise to reimbursement of fees or costs of any kind.

However, in the absence of agreement to the contrary, the requested State shall have the right to require of the requesting State reimbursement of costs incurred by the intervention of a law officer or by the use of a special form in the cases mentioned in Article 3.

## II. LETTERS ROGATORY

*Article 8*

In civil or commercial matters, the judicial authority of one contracting State may, in conformity with the provisions of its legislation, communicate by letter rogatory with the competent authority of another contracting State, in order to request that it carry out, within its limits of its jurisdiction, either an investigation or some other form of judicial act.

*Article 9*

Letters rogatory shall be transmitted by the consul of the requesting State to the authority designated by the requested State. That authority shall transmit to the consul a document attesting to the execution of the letter rogatory or stating what has prevented such execution.

Any difficulties which may arise in connection with such transmission shall be settled through diplomatic channels.

Any contracting State may declare, in a communication to the other contracting States, its desire that letters rogatory to be executed in its territory be transmitted to it through diplomatic channels.

Nothing in the foregoing provisions shall prevent two contracting States from agreeing to permit direct transmission of letters rogatory between their respective authorities.

#### *Article 10*

In the absence of agreement to the contrary, a letter rogatory must be drawn up either in the language of the requested authority or in the language agreed between the two States concerned, or it must be accompanied by a translation made in one of these languages and certified as accurate by a diplomatic or consular agent of the requesting State or by a sworn translator of the requested State.

#### *Article 11*

The judicial authority to which a letter rogatory is addressed must comply therewith, employing the same means of coercion as it would when carrying out a commission for the authorities of the requested State or a request made for such purpose by an interested party. Such coercion shall not necessarily be employed if the appearance of the parties in the case is involved.

The requesting authority shall, if it so requires, be informed of the date and place where the measure requested is to be carried out, so that the party concerned may be present.

The execution of a letter rogatory may be refused only if :

1. the authenticity of the document is not established ;
2. in the requested State, execution of the letter rogatory does not fall within the powers of the Bench ;
3. the State in whose territory execution should be effected deems it likely to be prejudicial to its sovereignty or security.

#### *Article 12*

Should the requested authority have no jurisdiction in the matter, the letter rogatory shall automatically be transmitted to the competent judicial authority of the same State, in accordance with the rules laid down in its legislation.

#### *Article 13*

In all cases where a letter rogatory is not executed by the requested authority the latter shall immediately so inform the requesting authority, stating, as regards

Article 11, the reasons why execution of the letter rogatory has been refused, and, as regards Article 12, the authority to which the letter has been transmitted.

#### *Article 14*

The judicial authority which executes a letter rogatory shall apply the laws of its country in respect of the formalities to be observed.

Nevertheless, should the requesting authority request that a special formality be observed, this shall be done, provided that such formality does not conflict with the legislation of the requested State.

#### *Article 15*

The provisions of the foregoing Articles shall not preclude the right of each State to have letters rogatory executed directly by its diplomatic or consular agents, if Conventions between the States concerned so permit or if the State in whose territory the letter rogatory is to be executed does not object.

#### *Article 16*

The execution of letters rogatory shall not give rise to reimbursement of fees or costs of any kind.

However, in the absence of agreement to the contrary, the requested State shall have the right to require of the requesting State reimbursement of compensation paid to witnesses or experts, as well as of costs incurred by the enforced intervention of a law officer, because the witnesses would not appear of their own free will, or expenses arising from the possible application of Article 14, paragraph 2.

### III. SECURITY FOR COSTS AND PENALTIES BY FOREIGN PLAINTIFFS ("CAUTIO JUDICATUM SOLVI")

#### *Article 17*

No security or deposit of any kind may be imposed, by reason of their status as foreigners or of the absence of domicile or residence in the country, upon nationals of one of the contracting States who are domiciled in one of such States and are plaintiffs or third parties before the courts of another such State.

The same rule shall apply to any payment required of plaintiffs or third parties as security for court costs.

All conventions whereby contracting States may have stipulated that their nationals shall be exempted from cautio judicatum solvi or from payment of court costs irrespective of domicile shall remain operative.

#### Article 18

Orders to pay the costs and expenses of a lawsuit, when pronounced in one of the contracting States against a plaintiff or third party who is exempted from security, deposit, or payment, by virtue either of Article 17, paragraphs 1 and 2, or of the law of the State where proceedings are instituted, shall, upon a request being made through diplomatic channels, be rendered enforceable without charge by the competent authority, in each of the other contracting States.

The same rule shall apply to court decisions which subsequently determine the costs of the proceedings.

Nothing in the foregoing provisions shall prevent agreement between two contracting States that the request for an exequatur may also be made directly by the interested party.

#### Article 19

Decisions relating to costs and expenses shall be declared enforceable without hearing the parties, subject, however, to subsequent appeal by the losing party, in conformity with the legislation of the country where enforcement is sought.

The authority competent to deal with the request for an exequatur shall limit itself to examining :

1. whether, under the law of the country where judgement has been pronounced, the transcript of the decision fulfils the conditions required for its authenticity :
2. whether, under the same law, the decision has acquired the force of *res judicata*.
3. whether the enacting terms of the decision are expressed either in the language of the requested authority or in the language agreed upon between the two States concerned, or whether it is accompanied by a translation made in one of those languages and, in the absence of agreement to the contrary, is certified as accurate by a diplomatic or consular agent of the requesting State or by a sworn translator of the requested State.

In order to fulfil the conditions prescribed in paragraph 2, sub-paragraphs 1 and 2 above, either of the following will suffice : a statement by the competent authority of the requesting State to the effect that the decision has acquired the force of *res judicata*, or the submission of duly authenticated documents serving to establish that the decision rendered has acquired the force of *res judicata*. The competence of the above-mentioned authority shall, in the absence of agreement to the contrary, be certified by the highest official in charge of the administration

of justice in the requesting State. The above-mentioned statement and certificate must be drawn up or translated in accordance with the rule laid down in paragraph 2, sub-paragraph 3.

The authority competent to deal with the request for an exequatur shall assess the total charges for attestation, translation, and authentication referred to in paragraph 2, sub-paragraph 3, provided that the party so requests at the same time. Such charges shall be regarded as costs and expenses of the proceedings.

#### IV. FREE LEGAL AID

##### *Article 20*

In civil and commercial matters, the nationals of each of the contracting States shall in all other contracting States be entitled to free legal aid on the same basis as nationals of the latter States, upon conforming with the legislation of the State in which free legal aid is sought.

In the States where legal aid is provided in administrative matters, the provisions of the preceding paragraph shall also apply to cases brought before the courts competent in such matters.

##### *Article 21*

In every case, the certificate or declaration of need must be issued or received by the authorities of the customary residence of the foreigner or, in default thereof, by the authorities of his present residence. Should the latter authorities not belong to a contracting State and not receive or issue certificates or declarations of this nature, a certificate or declaration issued or received by a diplomatic or consular agent of the country to which the foreigner belongs shall suffice.

If the claimant does not reside in the country where the request is made, the certificate or statement of need shall be authenticated without charge by a diplomatic or consular agent of the country where the document is to be produced.

##### *Article 22*

The authority competent to issue the certificate or to receive the statement of need may seek information concerning the financial situation of the applicant from the authorities of other contracting States.

The authority responsible for dealing with the request for free legal aid shall retain, within the limits of its competence, the right to verify the certificates, declarations and information which are furnished to it and to secure any further clarification required.



*Article 23*

When the needy person is in a country other than that in which free legal aid is to be sought, his request for legal aid, accompanied by the certificates or declarations of need and, where necessary, by other supporting documents which would facilitate investigation of the request, may be transmitted by the consul of his country to the authority competent to deal with the said request, or to the authority designated by the State where the request is to be investigated.

The provisions of Article 9, paragraphs 2, 3 and 4 and of Articles 10 and 12 above concerning letters rogatory shall apply to the transmission of requests for free legal aid and of any documents attached thereto.

*Article 24*

If the benefits of legal aid have been granted to a national of one of the contracting States, service in another contracting State of documents relating to his case, regardless of the manner in which it is effected, shall not give rise to any reimbursement of costs by the requesting State to the requested State.

The same shall apply to letters rogatory, with the exception of fees paid to experts.

V. FREE ISSUE OF EXTRACTS FROM REGISTERS OF BIRTHS, MARRIAGES AND DEATHS

*Article 25*

Needy persons who are nationals of one of the contracting States may, under the same conditions as nationals, demand the free issue of extracts from registers of births, marriages and deaths. The documents necessary for their marriage shall be authenticated without charge by the diplomatic or consular agents of the contracting States.

VI. IMPRISONMENT FOR DEBT

*Article 26*

Imprisonment for debt, whether as a means of enforcement or simply as a precautionary measure, may not, in civil or commercial matters, be applied to foreigners who are nationals of one of the contracting States in cases where it would not be applicable to the nationals of the country concerned. A fact which may be invoked by a national domiciled in the country as a ground for obtaining release from imprisonment for debt shall likewise tell in favour of the national of a contracting State, even if it occurred abroad.

## VII. FINAL PROVISIONS

*Article 27*

This Convention shall be open to signature by the States represented at the Seventh Session of the Conference on Private International Law.

It shall be ratified and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

A *procès-verbal* shall be drawn up of each deposit of instruments of ratification, and a certified true copy thereof shall be transmitted through diplomatic channels to each of the signatory States.

*Article 28*

This Convention shall enter into force on the sixtieth day from the date of deposit of the fourth instrument of ratification provided for in Article 27, paragraph 2.

In respect of each signatory State ratifying thereafter, the Convention shall enter into force on the sixtieth day from the date of deposit of its instrument of ratification.

*Article 29*

In relations between the States which have ratified it, this Convention shall replace the Convention relating to civil procedure, signed at The Hague 17th July 1905.

*Article 30*

This Convention shall automatically apply to the metropolitan territories of the contracting States.

If a contracting State wishes it to enter into force in all or certain of the other territories for whose international relations it is responsible, it shall give notice of this intention by an act which shall be deposited with the Ministry of Foreign Affairs of the Netherlands. The latter shall transmit a certified true copy thereof through diplomatic channels to each of the contracting States.

The Convention shall enter into force within six months of such communication, in relations between States which raise no objection and the territory or territories for whose international relations the State in question is responsible and for which notification has been given.

*Article 31*

Any State not represented at the Seventh Session of the Conference shall be permitted to accede to this Convention unless one or more States which have

ratified it object within a period of six months from the date on which the Netherlands Government notifies such accession. Accession shall be effected in the manner specified in Article 27, paragraph 2.

It is understood that accession may take place only after the entry into force of this Convention pursuant to Article 28, paragraph 1.

### *Article 32*

Each contracting State, upon signing or ratifying this Convention or upon acceding thereto, may by reservation limit the application of Article 17 to nationals of the contracting States having their customary residence in its territory.

A State availing itself of the right provided for in the preceding paragraph may claim the application of Article 17 by other contracting States only for such of its nationals who have their customary residence in the territory of the contracting State before whose courts they appear as plaintiffs or third parties.

### *Article 33*

The period of validity of this Convention shall be five years as from the date specified in Article 28, paragraph 1 above.

The period of validity shall commence on that date, even in respect of States which ratify or accede to the Convention subsequently.

The Convention shall be renewed by tacit agreement every five years, unless it be denounced. Notice of denunciation shall be given, at least six months before the expiration of the period, to the Ministry of Foreign Affairs of the Netherlands, which shall inform all the other contracting States.

Denunciation may be limited to all or certain of the territories mentioned in a notification in accordance with Article 30, paragraph 2.

Denunciation shall become effective only in respect of the State which has given notice thereof. The Convention shall remain in force as between the other contracting States.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Convention.

DONE at The Hague, on 1st March 1954, in a single copy, which shall be deposited in the archives of the Government of the Netherlands. A certified true copy of this Convention shall be transmitted through diplomatic channels to each of the States represented at the Seventh Session of The Hague Conference on International Private Law.

For the Federal Republic of Germany :

H. MUHLENFELD  
9 April 1957

For Austria :

Eric FILZ  
1/3 1954

For Belgium :

E. GRAEFFE  
1.III.1954

For Denmark :

Wilhelm EICKHOFF  
2/9 1955

For Spain :

José RUIZ DE ARANA  
Bauer DUQUE DE BAENA  
12 April 1957

For Finland :

Aarne WUORIMAA  
17 September 1956

For France :

E. DE BEAUVERGER  
24th January 1956

For Great Britain and Northern Ireland :

For Italy :

C. CARUSO  
1/3/1954

For Japan :

For Luxembourg :

COLLART  
28.VI.1954

For Norway :

Edwin ALTEN  
23.III.1954

For the Netherlands :

J. W. BEYEN  
1.III.1954

J. LUNS  
1.III.1954

For Portugal :

J. B. FERREIRA DA FONSECA  
20 February 1957

For Sweden :

Sven DAHLMAN  
28.6.54

For Switzerland :

D. SECRÉTAN  
2.7.54

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