

No. 5867

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**HUNGARY**  
and  
**GERMAN DEMOCRATIC REPUBLIC**

**Treaty (with Final Protocol) concerning legal assistance in civil, family and criminal cases. Signed at Berlin, on 30 October 1957**

*Official texts: Hungarian and German.*

*Registered by Hungary on 26 September 1961.*

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**HONGRIE**  
et  
**RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE**

**Traité (avec Protocole final) concernant les relations juridiques en matière civile, familiale et pénale. Signé à Berlin, le 30 octobre 1957**

*Textes officiels hongrois et allemand.*

*Enregistré par la Hongrie le 26 septembre 1961.*

[TRANSLATION — TRADUCTION]

No. 5867. TREATY<sup>1</sup> BETWEEN THE HUNGARIAN PEOPLE'S REPUBLIC AND THE GERMAN DEMOCRATIC REPUBLIC CONCERNING LEGAL ASSISTANCE IN CIVIL, FAMILY AND CRIMINAL CASES. SIGNED AT BERLIN, ON 30 OCTOBER 1957

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The Presidential Council of the Hungarian People's Republic and the President of the German Democratic Republic,

Desiring to strengthen the friendly relations between the two countries and their peoples in the sphere of legal co-operation as in others, have decided to conclude a treaty concerning legal assistance in civil, family and criminal cases.

For this purpose they have appointed as their plenipotentiaries :

The Presidential Council of the Hungarian People's Republic :

Dr. Ferenc Nezvál, Minister for Justice;

The President of the German Democratic Republic :

Dr. Hilde Benjamin, Minister for Justice,

who, having exchanged their full powers, found in good and due form, have agreed as follows :

PART I

GENERAL PROVISIONS

*Article 1*

LEGAL PROTECTION

(1) Nationals of either Contracting Party shall enjoy in the territory of the other Contracting Party, in respect of their person and property, the same legal protection as nationals of the latter Contracting Party. The same shall apply to corporations constituted under the laws of either Contracting Party.

(2) They shall have free and unimpeded access to the authorities of the other Contracting Party which deal with civil, family and criminal cases; they may appear before such authorities and may present petitions under the same conditions as nationals of the latter Contracting Party.

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<sup>1</sup> Came into force on 23 June 1958, thirty days after the exchange of the instruments of ratification, in accordance with article 88.

## Article 2

### PROVISION OF LEGAL ASSISTANCE

(1) The courts and the procurators' and State notaries' offices of the two Contracting Parties shall provide one another with legal assistance in civil, family and criminal cases.

(2) The authorities referred to in paragraph (1) shall also provide legal assistance to other authorities which deal with civil and family cases.

## Article 3

### METHOD OF COMMUNICATION

(1) In providing legal assistance, the authorities of the Contracting Parties referred to in article 2, paragraph (1), shall communicate with one another directly, save as otherwise provided herein in individual cases.

(2) Other authorities which deal with civil and family cases shall address their applications to the courts, save as otherwise provided herein in individual cases.

## Article 4

### SCOPE OF LEGAL ASSISTANCE

Legal assistance shall include the performance of specific acts required in connexion with judicial proceedings, especially the preparation and transmittal of files and documents, the execution of searches and seizures, the transmittal and delivery of articles, the collection of evidence through the interrogation of litigants, accused persons, witnesses, experts and other interested persons, the making of judicial inspections *in situ* and the execution of applications for the service of documents.

## Article 5

### FORM OF APPLICATION FOR LEGAL ASSISTANCE

(1) An application for legal assistance must contain the following particulars :

- (a) The title of the applicant authority;
- (b) The title of the authority applied to;
- (c) The title of the case in which legal assistance is applied for;
- (d) The given names and surnames of the parties or of the persons accused or convicted, their domicile or, where appropriate, residence, their nationality, their occupation and, in criminal cases, where possible, their place and date of birth and the names of their parents;

- (e) The names and addresses of their legal representatives;
- (f) The necessary information concerning the subject of the application, including, in criminal cases, a description of the offence.

(2) In applying for legal assistance the Contracting Parties shall use bilingual forms, models of which they shall exchange.

### *Article 6*

#### PROCEDURE FOR EXECUTING APPLICATIONS

(1) In providing legal assistance, the authority applied to shall follow the laws of its own State. However, it may on request employ different, judicial procedures, provided that such procedures do not conflict with mandatory provisions of municipal law.

(2) If the authority applied to is not competent to execute an application, it shall of its own motion transmit the application to the competent authority and shall notify the applicant authority accordingly.

(3) The authority applied to shall, if requested to do so, notify the applicant authority in due time of the date and place of execution of an application for legal assistance.

(4) The authority applied to shall, after executing an application for legal assistance, return the files to the applicant authority, or shall advise it of the circumstances which prevent execution of the application.

### *Article 7*

#### IMMUNITY OF WITNESSES AND EXPERTS

(1) No person of whatsoever nationality who, in reponse to a summons served on him by an authority of the Contracting Party applied to, appears as a witness or an expert before an authority of the applicant Contracting Party may be prosecuted, detained or punished either for the offence which is the subject of the proceedings or for any other offence committed before he crossed the frontier of the applicant State.

(2) The witness or expert shall forfeit this protection if, being at liberty to do so, he fails to quit the territory of the applicant Contracting Party within one week from the date on which the interrogating authority informs him that his presence is no longer necessary.

### *Article 8*

#### FORM OF DOCUMENTS

Documents transmitted in pursuance of this Treaty must be signed and sealed.

*Article 9*

## APPLICATIONS FOR THE SERVICE OF DOCUMENTS

(1) In serving documents, the authority applied to shall employ the procedure in effect in its own country, provided that the document to be served is drawn up in the language of the authority applied to or is accompanied by a certified translation into that language. Otherwise, the authority applied to shall deliver the document to the recipient only if he is willing to accept it.

(2) An application for the service of documents must state the exact address of the recipient and the subject of the document to be served.

(3) If a document cannot be served at the address indicated in the application, the authority applied to shall of its own motion take the necessary steps to determine the recipient's address. If such address cannot be determined, the applicant authority shall be so informed and the document in question shall be returned.

*Article 10*

## CONFIRMATION OF SERVICE OF DOCUMENTS

Service of documents shall be confirmed in accordance with the appropriate regulations of the Contracting Party applied to. The authority applied to shall notify the applicant authority of the time and place of service.

*Article 11*

## SERVICE OF DOCUMENTS ON OWN NATIONALS

(1) Each Contracting Party shall have the right to serve documents on its own nationals through its diplomatic or consular missions.

(2) No compulsion may be used in such service.

*Article 12*

## COSTS OF LEGAL ASSISTANCE

(1) The Contracting Party applied to shall make no claim for repayment of the costs of legal assistance. Each Contracting Party shall bear all costs incurred in providing legal assistance in its territory, including expenses incurred in taking evidence.

(2) The authority applied to shall communicate to the applicant authority the amount of the costs incurred. If the applicant authority recovers these costs from the person liable therefor, the sums recovered shall be retained by the Contracting Party which recovered them.

*Article 13*

## DENIAL OF LEGAL ASSISTANCE

Legal assistance may be denied if its provision might be prejudicial to the sovereignty or security of the Contracting Party applied to. The conditions under which assistance may be denied shall be decided by the Minister for Justice or the General Procurator of the Contracting Party applied to.

*Article 14*

## PROVISION OF INFORMATION

The Ministers for Justice of the Contracting Parties shall, upon direct application, provide each other with information concerning the law in force or formerly in force in their respective States.

*Article 15*

## LANGUAGE OF COMMUNICATION FOR PURPOSES OF LEGAL ASSISTANCE

(1) In communicating with one another for purposes of legal assistance, the authorities of the Contracting Parties shall use their own languages or the Russian language.

(2) In order to facilitate communication for purposes of legal assistance, translations into the language of the Contracting Party applied to should, if possible, be supplied even in cases where the provisions of this Treaty do not so require.

*Article 16*

## RECOGNITION OF DOCUMENTS

(1) Documents drawn up or attested in the territory of either Contracting Party by the competent State authorities or public officials within the limits of their competence, in due form and bearing an official seal, shall not require legalization in the territory of the other Contracting Party. The same shall apply to signatures attested in accordance with the regulations of either Contracting Party.

(2) Documents which are considered official documents in the territory of either Contracting Party shall have the evidential value of official documents in the territory of the other Contracting Party also.

## PART II

## SPECIAL PROVISIONS

## Chapter I

## LEGAL ASSISTANCE IN CIVIL AND FAMILY CASES

## (a) COSTS

*Article 17*

Nationals of one Contracting Party appearing before the courts of the other Contracting Party shall not be required to deposit security on the sole ground that they are aliens or have no domicile or residence in the country in question.

*Article 18*

(1) Nationals of either Contracting Party shall be accorded in the territory of the other Contracting Party exemption (temporary exemption) from legal costs and the appointment of counsel for the proceedings under the same conditions and to the same extent as nationals of the latter Contracting Party.

(2) Any exemption (temporary exemption) from legal costs granted by a court of one Contracting Party shall also be accorded to the litigant in all proceedings instituted in the same case before the courts of the other Contracting Party.

*Article 19*

(1) The certificate relating to personal and family status, income and property required for exemption (temporary exemption) from legal costs shall be issued by the competent authority of the Contracting Party in whose territory the petitioner has his domicile or residence.

(2) If the petitioner has neither domicile nor residence in the territory of either Contracting Party, a certificate issued or attested by the competent diplomatic or consular mission of his State shall suffice.

(3) The court ruling on a petition for exemption (temporary exemption) from legal costs may request further information from the authority which issued the certificate.

*Article 20*

(1) A national of one Contracting Party who wishes to petition a court of the other Contracting Party for exemption (temporary exemption) from legal

costs or for the appointment of counsel for the proceedings may make such petition in the form of an oral statement before the competent court of his place of domicile or residence. The said court shall draw up a record of his statement and shall transmit such record, together with the certificate referred to in article 19, paragraph (1), and the other documents submitted by the petitioner, to the competent court of the other Contracting Party.

(2) The complaint or other application may be made orally and entered in the record at the same time as the petition for exemption (temporary exemption) from legal costs.

#### ENFORCEMENT OF AWARDS OF COSTS

##### *Article 21*

(1) If a litigant exempt under article 17 from depositing security is required in pursuance of a final judgement to pay legal or non-legal costs, the competent court of the other Contracting Party shall on application, and without charge, make an order (issue authorization) for the enforcement of the award of costs to the successful party.

(2) Legal costs shall include the costs of issuing the certificate, and of making and certifying the translation, provided for in article 22.

(3) Judgements within the meaning of paragraph (1) shall include decisions fixing costs.

##### *Article 22*

(1) The court deciding on an application for enforcement (for the authorization of enforcement) under article 21 shall confine itself to determining whether:

- (a) The award whose enforcement is sought is accompanied by a certificate to the effect that it has become final;
- (b) The award and the documents referred to in sub-paragraph (a) are accompanied by a certified translation of that part of the judgement which fixes the amount of the costs.

(2) The cost of making the translation referred to in paragraph 1 (b) shall be regarded as part of the costs of enforcement.

##### *Article 23*

(1) Where legal costs are to be recovered, the court—of the Contracting Party in whose territory the award of costs is made—which dealt with the matter at first instance shall apply to the competent court of the other Contracting Party for recovery of the said costs. The latter shall initiate enforcement proceedings and remit the sum recovered to the diplomatic or consular mission of the former Contracting Party.



- (2) The application shall be accompanied by :
- (a) The bill of costs;
  - (b) A certificate to the effect that the judgement on which enforcement is based has become final;
  - (c) Certified translations of the documents referred to in sub-paragraphs (a) and (b).
- (3) The provisions of article 22, paragraph (2), shall apply *mutatis mutandis*.

(b) *PERSONAL AND FAMILY LAW*

*Article 24*

Legal capacity

(1) The legal capacity of nationals of the Contracting Parties shall be determined by the law of their State of nationality.

(2) Legal capacity in judicial proceedings instituted for the satisfaction of the needs of everyday life shall be determined by the law of the place at which such proceedings are instituted.

(3) The legal capacity of corporations having their headquarters in the territory of one of the Contracting Parties shall be determined by the law of the State under whose laws such corporations were constituted.

*Article 25*

Declaration of death

(1) The authorities competent to declare a person dead or to establish the fact of death (to establish the time of death) shall be those of the Contracting Party of which the missing person was a national at the time of his disappearance.

(2) The authorities of one Contracting Party may declare a national of the other Contracting Party dead :

- (a) Upon application by a person wishing to exercise a statutory right of succession to immovable property of the missing person situated in the territory of the former Contracting Party;
- (b) Upon application by the spouse of the missing person, provided that the said spouse is resident in the territory of the former Contracting Party at the time of the application.

(3) In the cases governed by paragraphs (1) and (2), the procedure for declaring a missing person dead shall be that prescribed by the law of the State of which he was a national at the time of his disappearance.

*Article 26*

## Form of marriage

(1) The form of marriage shall be determined by the law of the Contracting Party in whose territory the marriage takes place.

(2) The form of a marriage solemnized before a duly authorized diplomatic or consular representative shall be determined by the law of the sending State.

*Article 27*

## Personal and property relations of spouses

(1) The personal and property relations of spouses shall be determined by the law of the State of which they are nationals.

(2) Where one spouse is a national of one Contracting Party and the other a national of the other Contracting Party, their personal and property relations shall be determined by the law of the Contracting Party in whose territory they have their joint domicile.

(3) Where, in the case specified in paragraph (2), one spouse is domiciled in the territory of one Contracting Party and the other in the territory of the other Contracting Party, their personal and property relations shall be determined by the law of the Contracting Party in whose territory they had their last joint domicile.

(4) Where, in the case specified in paragraph (3), the spouses had their last joint domicile in the territory of a third State, their personal and property relations shall be determined according to the law of the Contracting Party to whose court one of them makes application.

*Article 28*

## Divorce

(1) In an action for divorce, the applicable law and, in principle, the courts having jurisdiction shall be those of the Contracting Party of which the spouses were nationals when the petition for divorce was filed. If the spouses are domiciled in the territory of the other Contracting Party, the latter's courts shall also have jurisdiction.

(2) If, when the petition for divorce is filed, one spouse is a national of one Contracting Party and the other a national of the other Contracting Party, and both spouses are domiciled in the territory of the same Contracting Party or one of them is domiciled in the territory of one Contracting Party and the other in the territory of the other Contracting Party, the courts of both Contracting Parties shall have jurisdiction. In rendering a decision, the courts shall apply the law of their own State.

*Article 29*

## Nullity of marriage

(1) The annulment of a marriage or the entry of a decree of nullity shall be permissible only if grounds exist for such action in accordance with the law both of the place at which the marriage was solemnized and of the Contracting Party of which spouses are nationals.

(2) The provisions of article 28 shall apply, *mutatis mutandis*, in determining which courts have jurisdiction.

## LEGAL RELATIONS BETWEEN PARENTS AND CHILDREN

*Article 30*

(1) Where parents and children have a common nationality, the legal relations between them shall be determined by the law of the State of which they are nationals.

(2) Where a child's nationality differs from that of his parents, the legal relations between them shall be determined by the law of the State of which the child is a national.

*Article 31*

The legal relations between a child born out of wedlock and his mother and father shall likewise be determined, so far as actions to establish paternity or maternity are concerned, by the law of the State of which the child is a national.

*Article 32*

The court having jurisdiction in actions to contest paternity or to establish paternity or maternity shall be that of the Contracting Party whose laws are applicable under article 30 and 31. If both parties to the case are domiciled in the territory of the other Contracting Party, the court of that Contracting Party shall also have jurisdiction.

*Article 33*

## Adoption

(1) Adoption or the termination of adoption shall be governed by the law of the Contracting Party of which adopter is a national at the time of the adoption or termination of adoption.

(2) Where the child is a national of the other Contracting Party, the consent of the child, of his legal representative and of the competent State authority must also be obtained if the law of that State so prescribes.

(3) If the child is adopted by a married couple of whom one spouse is a national of one Contracting Party and the other a national of the other Contracting Party, the adoption or termination of adoption shall be carried out in accordance with the law in force in the territory of both Contracting Parties.

(4) In proceedings for adoption or the termination of adoption, the authorities having jurisdiction shall be those of the Contracting Party of which the adopter is a national at the time of the adoption or termination of adoption. In the case specified in paragraph (3), the authority having jurisdiction shall be that in whose district the married couple have, or last had, their joint domicile or fixed abode.

#### GUARDIANSHIP AND CURATORSHIP

##### *Article 34*

(1) The authorities having jurisdiction in proceedings relating to guardianship or curatorship over nationals of the Contracting Parties shall, save as otherwise provided by this Treaty, be the guardianship authorities of the Contracting Party of which the ward is a national.

(2) The conditions governing the institution and termination of guardianship or curatorship shall be determined by the law of the ward's State of nationality.

(3) The legal relations between a guardian or curator and his ward shall be determined by the law of the Contracting Party whose authority appointed the guardian or curator. The obligation to accept the office of guardian or curator shall be determined by the law of the prospective guardian's or curator's State of nationality.

##### *Article 35*

(1) Where need arises to provide for guardianship or curatorship in the interests of a ward whose domicile, residence or property is in the territory of the other Contracting Party, the guardianship authority of such other Contracting Party, shall at once notify the guardianship authority of the Contracting Party having jurisdiction under article 34, paragraph (1).

(2) In urgent cases, the guardianship authority of the other Contracting Party may itself take the necessary measures, provided that it at once gives the diplomatic or consular mission of the Contracting Party of which the ward is a national notice of the provisional measures adopted. The said measures shall remain in effect until such time as the diplomatic or consular mission or the guardianship authority having jurisdiction under article 34, paragraph (1), decides otherwise.

*Article 36*

(1) The guardianship authority having jurisdiction under article 34, paragraph (1), may transfer guardianship or curatorship to the guardianship authorities of the other Contracting Party if the ward has his domicile or residence or owns property in that State. Such transfer shall not become effective until the guardianship authority applied to expressly assumes guardianship or curatorship and notifies the applicant guardianship authority accordingly.

(2) The guardianship authority acquiring jurisdiction under paragraph (1) shall exercise it in the manner prescribed by the law of its own State. However, in matters relating to the ward's legal or contractual capacity it shall apply the law of the Contracting Party of which the ward is a national. It shall not be entitled to decide questions relating to personal status, but may give its consent to marriage where such consent is required by the law of the ward's State of nationality.

## DECLARATION OF INCAPACITY

*Article 37*

In proceedings for declaring persons incapable, the applicable law and the court having jurisdiction shall be those of the Contracting Party of which the person to be declared incapable is a national.

*Article 38*

(1) If a court of one Contracting Party finds that grounds exist for declaring incapable a national of the other Contracting Party who has his domicile or residence in the said court's jurisdiction, it shall so notify the competent court of the other Contracting Party.

(2) If the court thus notified indicates willingness to leave further action in the matter to the court at the place of domicile or residence of the person concerned, or if it fails to reply within three months, the court at the place of domicile or residence may conduct the proceedings for a declaration of incapacity in accordance with the laws of its own State, provided that it does so on grounds which are also recognized for this purpose by the law of the Contracting Party of which the person concerned is a national. The decision concerning the declaration of incapacity shall be communicated to the competent court of the Contracting Party.

*Article 39*

In urgent cases, the court at the place of domicile or residence of a national of the other Contracting Party who is to be declared incapable may take or

order such provisional measures as are necessary to protect the person concerned or his property. The measures taken shall be reported to the court of the Contracting Party of which the person concerned is a national; they shall be revoked if the court of the latter Contracting Party renders a different decision in the case.

#### Article 40

The provisions of articles 37 and 38 shall apply, *mutatis mutandis*, to the revocation of a declaration of incapacity. A declaration of incapacity may be revoked even if the grounds for such revocation are recognized only by the law of one Contracting Party.

### (c) TRANSMITTAL OF CIVIL REGISTRATION DOCUMENTS

#### Article 41

(1) Each Contracting Party shall transmit to the other Contracting Party extracts from the civil registers relating to entries made concerning nationals of the latter Contracting Party after the entry into force of this Treaty. Such extracts shall be transmitted quarterly, free of charge, through the diplomatic channel.

(2) The competent civil registration authorities of each Contracting Party shall, upon application by the courts, State notaries' offices or other authorities of the other Contracting Party, transmit extracts from the civil registers, free of charge, for official use. They shall transmit such extracts directly to the authorities concerned.

(3) Applications by nationals of either Contracting Party for the preparation and transmittal of extracts from the civil registers of the other Contracting Party may be addressed directly to the competent registry. The latter shall transmit the document to the diplomatic or consular mission of its own State in the territory of the former Contracting Party, which shall deliver it to the applicant upon payment of the prescribed fees.

#### Article 42

(1) If the registries of either Contracting Party make any further entry or correction relating to the personal status of a national of the other Contracting Party, a certified extract from the civil register showing such further entry or correction shall be transmitted to the other Contracting Party.

(2) Each Contracting Party shall transmit to the other Contracting Party copies of any decisions of the courts and administrative authorities which relate to the personal status of nationals of the latter Contracting Party. Such decisions must contain all available information concerning nationality.

(3) The provisions of the second sentence of article 41, paragraph (1), shall also apply in such cases.

(d) *PROVISIONS RELATING TO SUCCESSION*

*Article 43*

Principle of equal rights

(1) Nationals of either Contracting Party shall enjoy the same rights as nationals of the other Contracting Party resident in the latter's territory as regards the capacity to make or revoke wills disposing of property situated, or of rights to be exercised, in the territory of the latter Contracting Party and as regards the capacity to succeed to property or rights. The property or rights shall descend to them under the same conditions as those applying to nationals of the latter Contracting Party resident in its territory.

(2) A document attesting the right to succession, especially a grant of probate (certificate of succession) or certificate of executorship, issued by the competent authority of one Contracting Party shall also serve as attestation of the relevant facts in the territory of the other Contracting Party.

*Article 44*

Applicable law

(1) Succession to the estate of nationals of the Contracting Parties shall be determined by the law of the Contracting Party of which the decedent was a national at the time of his death.

(2) Where the law of the Contracting Party in whose territory property belonging to the estate is situated imposes restrictions on nationals as well as on aliens as regards the disposal of such property, succession to such property shall be determined by the law of the Contracting Party in whose territory it is situated.

*Article 45*

Capacity to inherit

Where the law of one Contracting Party imposes restrictions on the capacity of corporations to inherit, such restrictive provisions shall apply even if succession is governed by the law of the other Contracting Party.

*Article 46*

## Right of succession of the State

Where, under the law of the contracting Parties, an estate reverts to the State, movable property shall revert to the State of which the decedent was a national at the time of his death and immovable property shall revert to the State in whose territory it is situated.

*Article 47*

## Wills

(1) The form of a testamentary disposition shall be determined by the law of the Contracting Party of which the testator was a national at the time of making the testamentary disposition. It shall, however, be deemed sufficient if the law of the place where the testamentary disposition was made is complied with. The same shall apply to the revocation of a testamentary disposition.

(2) The capacity to make or revoke a testamentary disposition shall be determined by the law of the Contracting Party of which the testator was a national at the time of making the testamentary disposition. The same law shall also determine the admissible types of testamentary dispositions.

(3) The legal effect of informality upon testamentary dispositions shall be determined by the law of the Contracting Party of which the testator was a national at the time of making the testamentary disposition.

*Article 48*

## Jurisdiction in matters of succession

(1) Proceedings in matters of succession shall, subject to the provisions of paragraph (4), be conducted by the succession authorities of the Contracting Party of which the testator was a national at the time of his death.

(2) In the case of immovable property and other property to which special provisions apply as indicated in article 44, paragraph (2), the succession authorities having jurisdiction shall be those of the Contracting Party in whose territory the said property is situated.

(3) The jurisdiction specified in this article shall extend, *mutatis mutandis*, to actions relating to claims to succession.

(4) If the entire estate of a national of one Contracting Party is situated in the territory of the other Contracting Party, the competent succession authority of the latter Contracting Party shall, upon petition by an heir or a legatee, and subject to the consent of all heirs whose place of residence is known, assume the functions of the succession authority referred to in paragraph (1). The foregoing shall not affect the jurisdiction specified in paragraph (2).



*Article 49*

## Notification of death

(1) If a national of one Contracting Party dies in the territory of the other Contracting Party, the local authority shall immediately notify the diplomatic or consular mission of the former Contracting Party of such death, communicating to it whatever information is available concerning the heirs, their domicile or residence, the size and value of the estate and the existence of a will.

(2) If the diplomatic or consular mission learns of the death first, it shall notify the competent succession authority with a view to the protection of the estate.

(3) If a national of one Contracting Party dies in its territory and it is learnt that there are heirs or legatees who are nationals of the other Contracting Party, the diplomatic or consular mission of the latter Contracting Party shall be so notified.

*Article 50*

## Right of the diplomatic or consular mission to act as representative

(1) In all succession proceedings in the territory of either Contracting Party, the diplomatic or consular mission shall have the right to represent nationals of its own State before the authorities of the said Contracting Party if such nationals do not take part in the proceedings and have appointed no other representatives; in such cases no special power of attorney shall be necessary.

(2) If a national of one Contracting Party not domiciled or resident in the territory of the other Contracting Party dies while travelling in such territory, his personal effects shall be delivered to the diplomatic or consular mission without any formal proceedings.

*Article 51*

## Publication of wills

(1) A will shall be published by the competent authority of the Contracting Party in whose territory the will is to be found. A copy of the will, a copy of the minute concerning its publication and, on application, the original will shall be transmitted to the competent authority of the testator's State of nationality or to the authority of the Contracting Party which is competent under this Treaty to conduct the succession proceedings.

(2) The provisions of paragraph (1) shall apply, *mutatis mutandis*, to the transmittal of a minute concerning the depositions of witnesses in whose presence a testamentary disposition was made by oral declaration.

*Article 52*

## Measures for the protection of the estate

(1) The succession authorities of each Contracting Party shall take, in accordance with their law, such measures as are necessary for the protection or administration of an estate left in their State by a national of the other Contracting Party.

(2) The diplomatic or consular mission shall be informed immediately of any measures taken under paragraph (1); it may participate, either directly or through its representative, in carrying out such measures. At the request of the diplomatic or consular mission, measures taken under paragraph (1) and any other necessary measures may be modified, postponed or rescinded.

(3) Measures taken under paragraph (1) must be rescinded at the request of the succession authority of the State of nationality (article 48, paragraph (1)).

*Article 53*

## Delivery of the estate

(1) If, after the completion of succession proceedings, the movable estate or the proceeds of sale of the movable or immovable estate are to descend to heirs resident in the territory of the other Contracting Party, such estate or proceeds shall be delivered to the diplomatic or consular mission of that State.

(2) The succession authority shall issue instructions for the delivery of the estate to the diplomatic or consular mission if :

- (a) The creditors have failed to present their claims within three months after the publication of due notice or the claims, having been presented, have been paid or secured;
- (b) All estate duties and other duties owed by the testator have been paid or secured;
- (c) The competent authorities have approved, where such approval is required, the export of the things constituting the estate. Moneys shall be transferred in accordance with the applicable currency laws.

*(e) RECOGNITION AND ENFORCEMENT OF JUDGEMENTS**Article 54*

## Recognition of judgements in matters not relating to property

Final judgements of courts of either Contracting Party in matters not relating to property shall be effective in the territory of the other Contracting Party

without the necessity of holding formal proceedings for recognition, provided that, when the judgement becomes final, one of the litigants is a national of the State whose court rendered the judgement and that no court of the other Contracting Party has previously rendered a final judgement in the matter or has exclusive jurisdiction under this Treaty.

#### RECOGNITION OF JUDGEMENTS IN MATTERS RELATING TO PROPERTY

##### *Article 55*

(1) Final judgements rendered in the territory of either Contracting Party, after the entry into force of this Treaty, in civil and family cases relating to claims to property filed after 1 January 1949 shall be recognized in the territory of the other Contracting Party.

(2) At the request of the Minister for Justice of either Contracting Party, the Minister for Justice of the other Contracting Party may also recognize final judgements which do not satisfy the conditions prescribed in paragraph (1).

##### *Article 56*

(1) Awards made by and amicable arrangements arrived at before arbitral tribunals shall be deemed equivalent to final judgements within the meaning of article 55, provided that the terms of the arbitration agreement are in conformity with the law of both Contracting Parties.

(2) Final awards of damages in criminal cases shall also be regarded as final judgements within the meaning of article 55.

#### ENFORCEMENT OF JUDGEMENTS

##### *Article 57*

(1) Judgements rendered by the courts of either Contracting Party which are recognized in the territory of the other Contracting Party under article 55 shall be enforceable in the territory of the latter Contracting Party.

(2) Amicable arrangements arrived at before courts shall be treated as court judgements. Awards made by and amicable arrangements arrived at before arbitral tribunals of the other Contracting Party shall be treated as awards made by and amicable arrangements arrived at before domestic arbitral tribunals.

(3) The law governing the enforceability of judgements (the authorization of enforcement) and enforcement shall be that of the Contracting Party in whose territory the proceedings take place.

*Article 58*

(1) Judgements on enforceability (on applications for authorization of enforcement) shall be rendered by the competent court of the Contracting Party in whose territory the respondent is domiciled.

(2) Application shall be made either to the court which rendered judgement in the case at first instance or to the court of the other Contracting Party which is competent to execute the application. An application made to the court of first instance shall be forwarded to the court of the other Contracting Party which is competent to execute it.

*Article 59*

(1) An application for establishment of the enforceability of a judgement (for authorization of enforcement) must be accompanied by the following :

- (a) An official copy of the judgement, with a certificate to the effect that it has become final;
- (b) If the respondent did not participate in the proceedings, the originals or certified copies of documents showing that he was served in due time and proper form with a summons or with other official notice of the institution of proceedings;
- (c) Certified translations of the application and of the documents specified in sub-paragraphs (a) and (b).

(2) An application for establishment of the enforceability of a judgement (for authorization of enforcement) may be accompanied by an application for enforcement.

*Article 60*

## Objections by the respondent

The court considering an application for the initiation of enforcement action (for authorization of enforcement) shall permit the respondent to state such objections to the initiation of enforcement action (to authorization of enforcement) as are admissible under the law of the Contracting Party in whose territory was rendered the judgement whose enforcement is sought.

*Article 61*

## Denial of enforceability (Refusal to enforce judgement)

Apart from the case referred to in article 13, a judgement shall not be enforced (authorization of enforcement shall be refused) if :

- (a) The courts of the Contracting Party in whose territory the judgement was rendered were not competent under the law of the Contracting Party in whose territory enforcement is sought;

- (b) The respondent did not participate in the proceedings and neither he nor his representative was served in due time with a summons or with other official notice of the institution of proceedings, or he was summoned or notified only by public notice or in some other manner inconsistent with the provisions on legal assistance laid down in this Treaty;
- (c) The judgement conflicts with an earlier judgement which has become final and which was rendered in an action between the same parties relating to the same claim by a court of the Contracting Party in whose territory enforcement is sought. However, this provision shall not apply if the judgement whose enforcement is sought satisfies the conditions which the law of the court ruling on the application prescribes for modification of a final judgement.

### *Article 62*

#### Delivery of articles

The delivery of movable property to a person domiciled in the territory of the other Contracting Party shall be effected in accordance with the export regulations in force. Moneys shall be transferred in accordance with the applicable currency laws.

### *Article 63*

#### Costs of enforcement

The calculation and recovery of costs incurred in connexion with enforcement shall be governed by the same provisions as apply to the enforcement of judgements of domestic courts.

## Chapter II

### LEGAL ASSISTANCE IN CRIMINAL CASES

#### (a) *EXTRADITION*

### *Article 64*

#### Extraditable offences

(1) Each Contracting Party shall extradite to the other on application, under the conditions laid down in this Treaty, persons who are required to answer a criminal charge or to serve a sentence.

(2) Extradition shall take place only for offences which are punishable under the law of both Contracting Parties with deprivation of liberty for a term of not less than one year or with a heavier penalty than deprivation of liberty (hereinafter called "extraditable offences").

(3) Neither Contracting Party shall extradite to the other its own nationals.

*Article 65*

## Refusal of extradition

(1) Extradition shall not take place if :

- (a) Under the law of the Contracting Party applied to, exemption from prosecution or punishment has been acquired by lapse of time or on other grounds;
- (b) The offender has already been sentenced for the same offence—whether or not the sentence has become final—or discharged for a good and sufficient reason by a court or other authority of the Contracting Party applied to;
- (c) Under the law of both Contracting Parties, a prosecution can be instituted only by a private complaint.

(2) Extradition may also be refused if the offence was committed in the territory of the Contracting Party applied to.

*Article 66*

## Obligation to prosecute

(1) Each Contracting Party undertakes to prosecute under its own law, on application by the other Contracting Party, any of its nationals who have committed an extraditable offence in the territory of the latter Contracting Party.

(2) If charges have not yet been filed, the application for prosecution shall be addressed by the General Procurator of the one Contracting Party to the General Procurator of the other Contracting Party. If charges have been filed, the application shall be addressed by the Minister for Justice of the one Contracting Party to the Minister for Justice of the other Contracting Party. The application shall be accompanied by all available evidence relating to the offence.

(3) The Contracting Party applied to shall notify the applicant Contracting Party of the result of the proceedings; if sentence has been passed, a copy of the sentence shall be enclosed with the notification.

*Article 67*

## Communication in matters of extradition

In matters of extradition the Ministers for Justice of the Contracting Parties shall communicate with each other directly. The General Procurators of the Contracting Parties may also communicate with each other directly in such matters within the limits of their competence.

*Article 68*

## Requisition for extradition

- (1) A requisition for extradition shall be accompanied :
- (a) If extradition is requested for purposes of execution of a sentence—by an official copy of the final sentence, showing the grounds therefor, and the text of the legislative provisions relating to the offence committed by the convicted person and the penalty therefor;
  - (b) If extradition is requested for purposes of criminal prosecution—by a certified copy of the warrant of arrest, a description of the offence stating the *res gestae* and the text of the legislative provisions relating to the extraditable offence and the penalty therefor; if the offence resulted in material damage, the extent of such damage shall also be specified.
- (2) A requisition for extradition shall also be accompanied, so far as possible, by a personal description and biographical particulars of the persons claimed, information concerning his nationality and residence, and his photograph and finger-prints.
- (3) The applicant Contracting Party shall not be bound to enclose with the requisition proof of the guilt of the person claimed.

*Article 69*

## Information to supplement a requisition for extradition

If the information communicated is insufficient to permit a decision on a requisition for extradition, the Contracting Party applied to may request supplementary information. For this purpose it may set a time-limit of not less than one month or more than two months. Such time-limit may be extended on request.

## DETENTION PENDING EXTRADITION

*Article 70*

Upon receipt of a requisition for extradition, the Contracting Party applied to shall take immediate steps to detain the person claimed.

*Article 71*

(1) A person shall be detained pending receipt of the requisition for his extradition if an application is made for that purpose citing a warrant of arrest or a final sentence or other appropriate judicial decision and announcing that a requisition for extradition will be made. An application for detention may be made directly by the competent courts or other State authorities by post, telegraph, telephone or wireless.

(2) A person may be arrested even in the absence of an application under paragraph (1) if there is sufficient reason to believe that he has committed an extraditable offence in the territory of the other Contracting Party.

(3) When an arrest has been made, the other Contracting Party shall be notified immediately.

### *Article 72*

#### Release of persons detained pending extradition

(1) If the applicant Contracting Party fails to furnish the information required to supplement a requisition for extradition within the time-limit set under article 69, the Contracting Party applied to may release the person detained.

(2) A person detained under article 71, paragraph (1), may be released if a properly executed requisition for his extradition is not received within two months after the dispatch of notification of his arrest.

(3) A person detained under article 71, paragraph (2), may be released if an application pursuant to article 71, paragraph (1), is not received within one month after the dispatch of notification of his arrest.

### *Article 73*

#### Postponement of extradition

If the person claimed is on trial for another offence before a court of the Contracting Party applied to, or is charged with another offence by a procurator's office of that State, or has been convicted of another offence by a court of that State, the decision on the requisition for his extradition may specify that extradition shall be postponed pending the conclusion of the proceedings or the completion or remission of the sentence.

### *Article 74*

#### Temporary extradition

(1) In the case specified in article 73, the person claimed may be extradited temporarily on application if the postponement of extradition might result in exemption from prosecution being acquired by lapse of time or might seriously prejudice the prosecution.

(2) A temporarily extradited person shall be returned after the conclusion of the criminal proceedings for the purpose of which he was extradited.



*Article 75*

## Concurrent requisitions for extradition

If requisitions for a person's extradition are received from more than one State, the Contracting Party applied to shall decide which requisition shall be complied with.

*Article 76*

## Limits to prosecution

(1) An extradited person may not, without the consent of the Contracting Party applied to, be prosecuted, punished or surrendered to a third State for an offence which was committed before his extradition and which is not the offence for which he was extradited. Such consent may not be refused if the offence is one for which the Contracting Party applied to is required under this Treaty to grant extradition.

(2) Consent under paragraph (1) shall not be required if the extradited person fails to quit the territory of the applicant Contracting Party within one month after the conclusion of the criminal proceedings or, in the event of his conviction, within one month after the completion or remission of the sentence, or if he returns thereto. Such period of one month shall not be deemed to include any period of time during which the extradited person is unable through no fault of his own to quit the territory of the applicant Contracting Party.

(3) The consent of the Contracting Party applied to shall not be required if the extradited person makes a statement before a court that he is willing to stand trial. In that case, a certified copy of the court record containing such statement shall be transmitted to the Contracting Party applied to.

*Article 77*

## Surrender

The Contracting Party applied to shall notify the applicant Contracting Party of the place and time of surrender. If the applicant Contracting Party fails to accept the person claimed within one month after the dispatch of the notification, such person may be released from custody.

*Article 78*

## Re-extradition

If an extradited person evades prosecution and returns to the territory of the Contracting Party applied to, he shall be arrested and re-extradited upon receipt of a new requisition without the production of further supporting documents.

*Article 79*

## Conveyance in transit

(1) Each Contracting Party shall, on application by the other Contracting Party, convey through its territory any person extradited by a third State to the latter Contracting Party. The foregoing shall not apply to cases in which there would be no obligation under this Treaty to grant extradition.

(2) An application under paragraph (1) shall be made and dealt with in the same manner as a requisition for extradition.

*Article 80*

## Notification of results of prosecution

The applicant Contracting Party shall notify the Contracting Party applied to of the results of proceedings taken against the person extradited. If the said person is sentenced, a copy of such sentence shall be transmitted after it has become final. This provision shall also apply to the cases referred to in article 76 of this Treaty.

*Article 81*

## Costs

The costs of extradition shall be borne by the Contracting Party in whose territory they were incurred; the costs conveyance in transit shall be borne by the applicant Contracting Party.

*(b) OTHER LEGAL ASSISTANCE IN CRIMINAL CASES**Article 82*

## Cases where provision of legal assistance is not obligatory

Apart from the cases referred to in article 13, there shall be no obligation to provide legal assistance in criminal cases not involving extradition if :

- (a) The criminal proceedings relate to a non-extraditable offence;
- (b) The courts or procurators' offices of the Contracting Party applied to are not competent to execute the application.

*Article 83*

## Temporary delivery and conveyance in transit of persons held in custody

(1) If a person who is held in custody in the territory of the Contracting Party applied to, and against whom charges have not yet been filed, is summoned

for interrogation as a witness or expert, the General Procurator of that Contracting Party may arrange for such person to be delivered to the territory of the applicant Contracting Party. If charges have been filed, the decision regarding delivery shall be taken by the Minister for Justice of the Contracting Party applied to. A person so delivered shall be kept in custody and returned as soon as possible after interrogation.

(2) If a person held in custody in a third State is summoned for interrogation as a witness or expert by the authorities of the applicant State, the Minister for Justice of the Contracting Party applied to shall authorize the conveyance of such person through the territory of his State, in either direction, provided that the protection prescribed in article 7 is guaranteed.

#### *Article 84*

##### Delivery of articles

(1) Each Contracting Party shall deliver to the other, on application :

- (a) Articles acquired by the offender or by any other person through the commission of an extraditable offence;
- (b) Articles having relevance to the commission of an extraditable offence;
- (c) Articles which may be important as material evidence in criminal proceedings, even if the offender cannot be extradited by reason of death, escape or any other circumstances.

(2) If the articles claimed are needed by a court or a procurator's office of the Contracting Party applied to as material evidence in criminal proceedings, their delivery may be postponed until such proceedings are concluded.

(3) These provisions shall not affect the rights of third parties to the articles to be delivered. After the conclusion of the proceedings, such articles shall be returned to the Contracting Party applied to for transmittal to the person entitled to them.

#### *Article 85*

##### Notification of sentences

(1) Each Contracting Party shall notify the other Contracting Party of final sentences passed by its courts on nationals of the latter Contracting Party.

(2) Notification shall be effected through the exchange by the General Procurators of the Contracting Parties, at quarterly intervals, of extracts from the register of convictions relating to such sentences. The finger-prints of the convicted persons shall, if available, be transmitted at the same time.

*Article 86*

## Information from the register of convictions

The courts and procurators' offices of the Contracting Parties shall supply each other free of charge, on direct application, with information from the register of convictions.

## PART III

## FINAL PROVISIONS

*Article 87*

This Treaty shall be ratified. The instruments of ratification shall be exchanged at Budapest as soon as possible.

*Article 88*

This Treaty shall enter into force thirty days after the exchange of the instruments of ratification and shall remain in force for a term of five years from the date of entry into force. Unless one of the Contracting Parties denounces the Treaty not later than six months before the expiry of such term, it shall be extended in force for successive terms of five years, subject to the specified time-limit for denunciation.

This Treaty is done in duplicate in the Hungarian and German languages. Both texts are equally authentic.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting Parties have signed this Treaty and have thereto affixed their seals.

Berlin, 30 October 1957.

For the Presidential Council  
of the Hungarian People's  
Republic :  
Dr. NEZVÁL Ferenc

For the President  
of the German Democratic  
Republic :  
H. BENJAMIN

FINAL PROTOCOL TO THE TREATY<sup>1</sup> BETWEEN THE HUNGARIAN PEOPLE'S REPUBLIC AND THE GERMAN DEMOCRATIC REPUBLIC CONCERNING LEGAL ASSISTANCE IN CIVIL, FAMILY AND CRIMINAL CASES

The plenipotentiaries of the Hungarian People's Republic and the German Democratic Republic, on signing this Treaty,<sup>1</sup> declare that they agree as follows :

I

All questions relating to the interpretation of this Treaty, including those arising as a result of changes in the legislation of the Contracting Parties, shall be settled by the Ministers for Justice.

II

The juxtaposition of expressions used in this Treaty with other expressions in parentheses indicates that the legal concepts or procedures in question correspond to each other under the laws of the Contracting Parties.

III

In order to facilitate mutual legal assistance, the Contracting Parties shall exchange lists of courts, procurators' offices and State notaries' offices and shall inform each other annually of any changes therein.

IV

The Contracting Parties agree that the expression "civil cases" shall be deemed to include disputes brought before labour courts, and that the labour courts of the German Democratic Republic shall be treated as courts within the meaning of article 2.

IN WITNESS WHEREOF the plenipotentiaries have signed this Final Protocol, which constitutes an integral part of the aforementioned Treaty.

DONE in duplicate in the Hungarian and German languages at Berlin, on 30 October 1957.

For the Presidential Council  
of the Hungarian People's  
Republic :

Dr. NEZVÁL Ferenc

For the President  
of the German Democratic  
Republic :

H. BENJAMIN

<sup>1</sup> See p. 60 of this volume.