

No. 6550

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**AUSTRIA  
and  
CZECHOSLOVAKIA**

**Treaty concerning legal relations in civil cases, official documents, and the communication of legal information (with Final Protocol). Signed at Prague, on 10 November 1961**

*Official texts: German and Czech.*

*Registered by Austria on 5 March 1963.*

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**AUTRICHE  
et  
TCHÉCOSLOVAQUIE**

**Traité concernant les relations juridiques en matière civile, les actes instrumentaires et la communication de renseignements juridiques (avec Protocole final). Signé à Prague, le 10 novembre 1961**

*Textes officiels allemand et tchèque.*

*Enregistré par l'Autriche le 5 mars 1963.*

[TRANSLATION — TRADUCTION]

No. 6550. TREATY<sup>1</sup> BETWEEN THE REPUBLIC OF AUSTRIA AND THE CZECHOSLOVAK SOCIALIST REPUBLIC CONCERNING LEGAL RELATIONS IN CIVIL CASES, OFFICIAL DOCUMENTS, AND THE COMMUNICATION OF LEGAL INFORMATION. SIGNED AT PRAGUE, ON 10 NOVEMBER 1961

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The Federal President of the Republic of Austria and the President of the Czechoslovak Socialist Republic have agreed to conclude a treaty concerning legal relations in civil cases, official documents, and the communication of legal information, and for this purpose have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Heinrich Calice, Envoy Extraordinary and Minister Plenipotentiary,

The President of the Czechoslovak Socialist Republic :

Mr. Václav David, Minister for Foreign Affairs,

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

PART I

LEGAL PROTECTION, SERVICE OF DOCUMENTS AND LEGAL ASSISTANCE  
IN CIVIL CASES

LEGAL PROTECTION

*Article 1*

1. Nationals of either Contracting State shall have free access in the territory of the other Contracting State to the courts and may appear before them under the same conditions as nationals of the latter State.

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<sup>1</sup> Came into force on 30 December 1962, sixty days after the exchange of the instruments of ratification which took place at Vienna on 31 October 1962, in accordance with article 30 (1).

2. The provisions of this Treaty referring to nationals of either Contracting State shall also apply to bodies corporate, including commercial companies, constituted under the law of either Contracting State and domiciled in its territory.

#### LEGAL COSTS

##### *Article 2*

1. If a national of one of the Contracting States, domiciled or habitually resident in either Contracting State, appears in court in the other Contracting State as a plaintiff (applicant) or intervenor, he shall not be required, on the ground of his being an alien or of his not being domiciled or habitually resident in the country, to deposit security for legal costs.

2. If under the law of either Contracting State advance payment is required to cover court fees, the rule in paragraph 1 shall apply.

3. If under the law of either Contracting State a court fee for the proceedings is payable on filing the complaint (application), a national of the other Contracting State shall be allowed not less than one month to effect such payment.

4. Advance payments in respect of compensation payable by one of the parties may be required in one Contracting State of nationals of the other Contracting State only on the same conditions and to the same extent as they are required of the former State's own nationals.

##### *Article 3*

1. If a final and enforceable judgement rendered in one Contracting State orders the reimbursement of legal costs or the payment of court fees by a plaintiff (applicant) or intervenor who, in accordance with article 2 or with the law of the State in which the complaint was filed, has been exempted from the deposit of security or from making advance payments, such judgement shall, on application, be enforced in the territory of the other Contracting State. An application for enforcement may be made either direct to the court competent to decide thereon or to the court which rendered judgement in the case at first instance.

2. The provisions of paragraph 1 shall also apply to retrospective decisions fixing the amount of legal costs or court fees.

3. The application for enforcement shall be accompanied by the following :
- (a) an official copy of the judgement, with endorsement of its finality and enforceability ;
  - (b) a translation thereof in the language of the court competent to decide on the application ;
  - (c) where the application is made to the court which rendered judgement at first instance, a translation thereof into the language of the court competent to decide on the application.

Translations shall be subject to the provisions of article 17, paragraph 3. If the application is made to the court which rendered judgement at first instance, it shall be transmitted through the same channel as an application for legal assistance.

4. Judgements specified in paragraph 1 rendered by courts of the other State shall be enforced as if they were domestic judgements, subject to the proviso, however, that decisions on applications for enforcement shall be open to appeal.

5. Legal costs within the meaning of paragraph 1 include the cost of the endorsement of finality and enforceability, and the costs of such translations and attestations as may be necessary. Such costs shall on request be fixed by the court required to decide on the application for enforcement.

#### BENEFITS IN RESPECT OF MEANS (JUDICIAL ASSISTANCE FOR POOR PERSONS)

##### *Article 4*

1. Nationals of one of the Contracting States appearing before the courts of the other Contracting State shall be admitted to benefits granted in respect of means (judicial assistance for poor persons) on the same conditions and to the same extent as nationals of the latter State.

2. If a party to a legal action in one of the Contracting States is entitled to the benefits referred to in paragraph 1, such benefits shall extend to all proceedings undertaken in the other Contracting State in connexion with that action. They shall also extend to execution proceedings for the recovery of costs (article 3), if under the law of the State in which execution is to be effected the benefits in question extend to execution proceedings.

##### *Article 5*

1. The certificate required for obtaining the benefits referred to in article 4, paragraph 1, shall be issued by the competent authority of the Contracting State in whose territory the petitioner has his domicile or habitual residence.

2. If the petitioner is not domiciled or habitually resident in either Contracting State, the certificate may be issued by the competent diplomatic or consular authority of the State of which he is a national. The foregoing notwithstanding, the benefits referred to in article 4, paragraph 1, may be granted on the basis of a certificate issued by an authority of the State in which the petitioner has his domicile or habitual residence.

#### *Article 6*

The court required to rule on a petition for authorization of the benefits referred to in article 4, paragraph 1, shall, within the limits of its jurisdiction, retain the right to verify the accuracy of the certificate submitted to it.

#### *Article 7*

1. If a national of one Contracting State who has his domicile or habitual residence in either State wishes to avail himself of the benefits referred to in article 4, paragraph 1, before a court of the other Contracting State, he may file the petition to that effect with the district court of his place of domicile or habitual residence.

2. The petition shall be accompanied by the certificate mentioned in article 5 and if necessary by a statement of the facts of the case.

3. The petition and the documents accompanying it shall be forwarded through the channel referred to in article 9.

4. The fact that a petition is not drawn up in the language of the court required to rule on it shall not affect its treatment. Any translations that may be necessary shall be provided by the authorities of the State whose court is required to rule on the matter.

5. If the court required to rule on the petition authorizes the benefits, it shall of its own motion appoint a representative for the petitioner.

### COMMON PROVISIONS CONCERNING SERVICE OF DOCUMENTS AND LEGAL ASSISTANCE

#### *Article 8*

1. The Contracting States undertake through their courts, on application, to provide each other with legal assistance and effect service of documents in civil cases, including family cases.

2. In the matters referred to in paragraph 1 above, the courts shall provide legal assistance and effect service of documents on the application of administrative author-

ities also, where the latter are competent in such matters. The provisions concerning service of documents and legal assistance which refer to applications by courts shall apply *mutatis mutandis* to applications by such administrative authorities.

#### Article 9

Save as otherwise provided in this Treaty, the courts of the two Contracting States shall communicate with one another through their respective Ministries of Justice.

#### Article 10

In applications for service of documents or legal assistance, courts may use the language of their own country. Applications shall bear an official seal; they shall not require authentication.

#### Article 11

Application must contain the following particulars :

- (a) The designation of the case to which the application refers ;
- (b) The first names, surnames, occupations and domicile or residence of the parties (in the case of a body corporate, its name and domicile) ;
- (c) The first names, surnames and addresses of their representatives, if any ;
- (d) Such information as may be necessary concerning the object of the application, including, where the application is for service of documents, the address of the recipient and the nature of the document to be served, and where the application is for legal assistance, the circumstances as to which evidence is to be taken and any questions to be put to the persons from whom it is to be taken.

#### Article 12

The mode of execution of applications, and the language to be used for the purpose, shall be determined by the law of the Contracting State to which the court applied to belongs. Nevertheless, the latter court shall, if requested to do so, follow specified procedures of the other Contracting State, provided that such procedures are not incompatible with the law of its own State.

#### Article 13

1. If the address of a person from whom evidence is to be taken or on whom a document is to be served is incomplete or is found to be incorrect, the court applied to shall, if possible, determine the correct address.

2. Where the court applied to is not competent to execute an application it shall transmit such application to the competent court, if the latter is within the country. The court applied to shall notify the applicant court of its action direct, through the postal channel.

3. The court applied to shall at the request of the applicant court notify the latter in good time direct, through the postal channel by registered letter, of the place and time of execution of the application for legal assistance.

#### *Article 14*

Where it has not proved possible to give effect to the application, the documents shall be returned with a statement of the reasons for which the application could not be executed or its execution was refused.

#### *Article 15*

1. With the exception of fees paid to experts, costs incurred in executing an application shall not be reimbursed as between the Contracting States.

2. The amount and nature of the non-reimbursable costs referred to in paragraph 1 above shall be communicated to the applicant court.

3. The taking of expert evidence may not be made subject to the deposit of an advance payment with the court applied to unless the expert's fee is payable by a party who has his domicile or habitual residence in the State of the court applied to.

#### *Article 16*

The execution of an application shall not be refused unless the State of the court applied to considers that the execution of the application would be contrary to public policy.

### SPECIAL PROVISIONS CONCERNING SERVICE OF DOCUMENTS

#### *Article 17*

1. If the document to be served is drawn up in the language of the court applied to or is accompanied by a translation into that language, the court applied to shall effect service in accordance with the law of its own country, this provision being without prejudice, however, to article 12 above.

2. In cases other than that specified in paragraph 1, the document shall be served on the recipient only if he is willing to accept it.

3. The translation referred to in paragraph 1 must be either an official translation or a translation certified as correct by a person officially employed as a translator in one of the two Contracting States ; the signature of the translator need not be authenticated.

*Article 18*

Service shall be proved either by a certificate of service transmitted by the applicant court or provided by the court applied to, or by an official report drawn up by the court applied to. The certificate of service or official report shall bear the signature of the authority responsible for serving the document, the seal of the court, and the signature of the person who received the document, or if the document was served in another manner, an entry to that effect ; and must indicate the nature of the document served, its reference number, the applicant court, and the manner and date of service.

## SPECIAL PROVISIONS CONCERNING LEGAL ASSISTANCE

*Article 19*

Where application is made for evidence to be taken from a party, the court applied to shall not be bound to employ compulsion in order to effect such party's appearance in court.

## RIGHTS OF DIPLOMATIC AND CONSULAR MISSIONS

*Article 20*

Nothing in this Treaty shall affect the right of diplomatic and consular missions of the two Contracting States to communicate with nationals of their State—provided that they do not possess dual nationality—in matters including those covered by this Treaty ; however, no threat or use of compulsion may be made for this purpose.

## PART II

## OFFICIAL DOCUMENTS

*Article 21*

1. Officially signed and sealed documents issued by a court or administrative authority of either Contracting State shall have the evidential value of official documents before courts and administrative authorities of the other Contracting State. The same shall apply to other documents regarded as having the evidential value of official documents under the law of the Contracting State in which they were issued.

2. The same evidential value shall be attached to the authentication by a court, an administrative authority or an Austrian notary public of a signature affixed to a private document.



*Article 22*

Documents and authentications mentioned in article 21, paragraph 1, bearing the official signature and official seal of the court or administrative authority or of the person who drew up the document shall require no further legalization for use before the courts and administrative authorities of the other Contracting State.

*Article 23*

1. Each Contracting State shall transmit to the other, free of taxes and charges, civil registration certificates relating to births, marriages and deaths of nationals of the other Contracting State registered after the date of the entry into force of this Treaty.

2. If after the date of the entry into force of this Treaty an additional entry is made in respect of a birth, marriage or death already registered, a complete copy of the original entry and of the additional entry shall be transmitted in accordance with paragraph 1 above.

3. Death certificates shall be transmitted immediately ; other documents shall be transmitted together quarterly.

*Article 24*

On the application of an authority of one Contracting State, the competent authority of the other Contracting State shall prepare and transmit for official use, free of taxes and charges, extracts and official copies from the civil registers and copies of judicial decisions in cases relating to personal status. The application must adequately explain the public interest involved.

*Article 25*

In the transmission of documents under article 23 and in the matter of applications under article 24, the diplomatic or consular channel shall be employed ; it shall not be necessary to attach translations.

*Article 26*

Any provisions of the law of one of the Contracting States requiring attestation of the competence of an authority issuing a certificate of capacity to marry shall not apply as between the Contracting States.

## PART III

## LEGAL INFORMATION

*Article 27*

The Federal Ministry of Justice of the Republic of Austria and the Ministry of Justice of the Czechoslovak Socialist Republic shall provide each other on request with information concerning legal provisions in force, or formerly in force, in their State.

## PART IV

## GENERAL AND FINAL PROVISIONS

*Article 28*

The provisions of parts I and II of this Treaty which refer to courts shall be applicable to Czechoslovak State Notaries' Offices in respect of cases which, in the Republic of Austria, would come within the jurisdiction of the courts.

*Article 29*

This Treaty shall be subject to ratification ; the instruments of ratification shall be exchanged as soon as possible at Vienna.

*Article 30*

1. This Treaty shall enter into force sixty days after the exchange of the instruments of ratification.

2. The Treaty is concluded for a term of five years and shall continue in force thereafter unless one of the Contracting States gives notice to the other Contracting State six months before the expiry of the five-year term that it is denouncing the Treaty.

3. If the Treaty is not denounced in accordance with paragraph 2, it shall continue in force indefinitely, unless one of the Contracting States gives notice of denunciation of the Treaty to the other Contracting State, in which case it shall continue in force for one year after its denunciation.

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

DONE at Prague on 10 November 1961 in duplicate in the German and Czech languages, both texts being authentic.

For the Republic of Austria :

CALICE

For the Czechoslovak Socialist Republic :

V. DAVID

### FINAL PROTOCOL

In connexion with the signing of the Treaty of today's<sup>1</sup> date between the Republic of Austria and the Czechoslovak Socialist Republic concerning legal relations in civil cases, official documents, and the communication of legal information, the following points have been agreed upon :

1. In the Republic of Austria civil registration certificates include marriage certificates issued by the competent denominational authorities of legally recognized Churches and religious congregations in respect of marriages celebrated before them before 1 August 1938; and birth certificates (confirmations of records of birth) and death certificates issued by such authorities in respect of births and deaths recorded before 1 January 1939. The Federal Ministry of Foreign Affairs will send the Ministry of Foreign Affairs of the Czechoslovak Socialist Republic a list of such Churches and religious congregations not later than three months after the date on which the Treaty enters into force.

In the Czechoslovak Socialist Republic civil registration certificates include extracts from their registers made out by competent denominational authorities before 1 January 1950. The Ministry of Foreign Affairs of the Czechoslovak Socialist Republic will send the Federal Ministry of Foreign Affairs of the Republic of Austria a list of the Churches and religious congregations concerned not later than three months after the date on which the Treaty enters into force.

2. The provisions of article 22 shall also be applied to documents of Austrian social insurance bodies which are not regarded as official documents under Austrian law.

3. Pending the entry into force of a social insurance agreement between the two Contracting States, the provisions of this Treaty shall be applied as appropriate to arbitral tribunals under the social insurance scheme of the Republic of Austria. Upon application by Czechoslovak courts, Austrian courts shall effect service of docu-

<sup>1</sup> See p. 358 of this volume.

ments and furnish legal assistance in social insurance matters in accordance with the provisions of this Treaty.

4. The entry into force of this Treaty shall not affect the existing rules with respect to civil and criminal cases in spheres not covered by this Treaty (inheritance, guardianship and curatorship, and criminal cases ; Notice published in the *Amtsblatt* (Official Bulletin) of the Austrian Department of Justice, 1948, p. 7, and Notice No. 12, in identical terms, published in the *Vestník* (Bulletin) of the Czechoslovak Ministry of Justice, 1948).

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

DONE at Prague on 10 November 1961 in duplicate in the German and Czech languages, both texts being authentic.

For the Republic of Austria :

CALICE

For the Czechoslovak Socialist Republic :

V. DAVID

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