

No. 9133

HUNGARY
and
AUSTRIA

Treaty concerning legal relations in civil cases and concerning official documents (with Final Protocol and exchange of letters). Signed at Vienna, on 9 April 1965

Official texts: Hungarian and German.

Registered by Hungary on 6 June 1968.

HONGRIE
et
AUTRICHE

Traité d'entraide en matière civile et en matière d'actes (avec Protocole final et échange de lettres). Signé à Vienne, le 9 avril 1965

Textes officiels hongrois et allemand.

Enregistré par la Hongrie le 6 juin 1968.

[TRANSLATION — TRADUCTION]

No. 9133. TREATY¹ BETWEEN THE HUNGARIAN PEOPLE'S REPUBLIC AND THE REPUBLIC OF AUSTRIA CONCERNING LEGAL RELATIONS IN CIVIL CASES AND CONCERNING OFFICIAL DOCUMENTS. SIGNED AT VIENNA, ON 9 APRIL 1965

The Presidential Council of the Hungarian People's Republic and the Federal President of the Republic of Austria, desiring to facilitate legal relations between the two States, have agreed to conclude a treaty concerning legal relations in civil cases and concerning official documents and have for that purpose appointed as their plenipotentiaries :

The Presidential Council of the Hungarian People's Republic :

Mr. János Péter, Minister for Foreign Affairs;

The Federal President of the Republic of Austria :

Dr. Bruno Kreisky, Federal Minister for Foreign Affairs;

Dr. Christian Broda, Federal Minister of Justice;

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

(2) The provisions of this Treaty relating 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.

¹ Came into force on 26 September 1967, sixty days after the exchange of the instruments of ratification, which took place at Budapest on 28 July 1967, in accordance with paragraph 1 of article 31.

COSTS

Article 2

A national of one Contracting State who appears before a court of the other Contracting State as a plaintiff (applicant) or intervenor 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 costs, provided that he is domiciled or habitually resident in either Contracting State.

Article 3

(1) Where 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 is required, under a final and enforceable judgement, to pay costs, advances for costs made by the State or court fees, such judgement shall, on application, be enforced in the other Contracting State. Applications in respect of costs shall be made by the successful party, while applications in respect of advances for costs made by the State and of court fees shall be made by the competent authority of the State in which the complaint was filed. An application by the successful party may be made not only to the competent court of the other Contracting State but also to the court which rendered judgement at first instance.

(2) The provisions of paragraph (1) shall also apply to judgements by which the amount of costs, of advances for costs made by the State or of court fees are fixed retrospectively.

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

Article 4

- (1) The application for enforcement shall be accompanied by :
- (a) A copy of the operative part of the judgement, with endorsement of its finality and enforceability;
 - (b) A translation into the language of the court competent to decide on the application; the said translation shall be subject to the provisions of article 18, paragraph (3).

(2) Where an application by the successful party is made to the court which rendered judgement at first instance, it shall be forwarded together with a translation into the language of the other Contracting State conforming to the provisions of article 18, paragraph (3).

(3) The forwarding of applications for enforcement shall be subject to the provisions of articles 10 and 11.

(4) Judgements within the meaning of paragraph (1) which are rendered by courts of the other Contracting State shall be enforced as if they were domestic judgements, provided, however, that applications for enforcement and decisions on them shall not be subject to the payment of fees, that there shall be no prior hearing of the parties and that decisions on applications for enforcement shall be open to appeal by the parties.

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

Article 5

(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) under the same conditions and to the same extent as nationals of the latter State.

(2) Where a party to an action in one of the Contracting States is entitled to the benefits referred to in paragraph (1), such benefits shall extend to the provision of legal assistance and the service of documents in connexion with that action in the territory of the other Contracting State.

Article 6

(1) Where the petitioner is domiciled or habitually resident in one of the Contracting States, the certificate required in order to obtain the benefits referred to in article 5 shall be issued by the competent authority of the place of domicile or habitual residence.

(2) Where the petitioner is not domiciled or habitually resident in either Contracting State, it shall be sufficient if the certificate is issued by such diplomatic or consular authority of the Contracting State of which he is a national as has competence in respect of his place of domicile or habitual residence.

Article 7

(1) The authority competent to issue the certificate referred to in article 6, paragraph (1), may secure information concerning the petitioner's means from the authorities of the other Contracting State.

(2) The court required to rule on a petition for authorization of the benefits referred to in article 5, paragraph (1), shall, within the limits of its jurisdiction, retain the rights to verify the accuracy of the certificate submitted to it.

Article 8

(1) Where a national of one Contracting State who is domiciled or habitually resident in either State wishes to avail himself of the benefits referred to in article 5, paragraph (1), before a court of the other Contracting State, he may file the petition for authorization of the benefits and for appointment of a representative with the district court in whose jurisdiction he is domiciled or habitually resident.

(2) The petition shall be accompanied by the certificate referred to in article 6 and, if necessary, by a statement of the facts of the case.

(3) The petition and the documents accompanying it shall be forwarded in the manner specified in article 10.

(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. Arrangements for any translations that may be necessary shall be made by the authorities of the State whose court is required to rule on the matter.

(5) The court competent to rule on the petition shall, if the benefits are authorized, appoint, of its own motion or on application, a representative for the petitioner in accordance with the law of its State.

COMMON PROVISIONS CONCERNING SERVICE OF DOCUMENTS AND LEGAL ASSISTANCE

Article 9

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

(2) In the matters referred to in paragraph (1), the courts shall also provide legal assistance and effect the service of documents on the application of administrative authorities in so far as the latter are competent in such matters.

(3) In matters of succession, in proceedings for the preservation of evidence and in proceedings to invalidate documents and securities, the Austrian courts shall also provide legal assistance to and effect the service of documents for Hungarian notaries public.

(4) The provisions relating to applications by court for service of documents and legal assistance shall apply *mutatis mutandis* to applications by the above-mentioned administrative authorities (paragraph (2)) and by Hungarian notaries public (paragraph (3)).

Article 10

Save as otherwise provided in this Treaty, the courts of the two Contracting States shall, in matters relating to service of documents and legal assistance, communicate with one another through their respective Ministries of Justice.

Article 11

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

Article 12

Applications must contain the following particulars :

- (a) The designation of the case to which the application relates;
- (b) The given names, surnames, occupations and domicile or residence of the parties (in the case of bodies corporate, including commercial companies, their names and domicile);
- (c) The given names, surnames and addresses of the representatives, if any, of the parties;
- (d) Necessary information concerning the object of the application, and specifically, where the application is for service of documents, the address of the addressee and the nature of the document to be served and, where the application is for legal assistance, the circumstances concerning which evidence is to be obtained and, where applicable, the questions to be put to the persons from whom evidence is to be taken.

Article 13

The mode of execution of applications shall be determined by the law of the Contracting State to which the court applied to belongs. However, the latter court shall, if the applicant court so requests, follow specified procedures of the other Contracting State, provided that such procedures are not contrary to the legal principles of its own State.

Article 14

(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) If the court applied to is not competent to execute an application, it shall transmit such application to the competent court if the latter is situated within the country. The court applied to shall notify the applicant court of its action direct, by mail.

Article 15

Where it has not proved possible to execute an application, the documents shall be returned with a statement of the circumstances which prevented execution or the reasons for which execution was refused.

Article 16

(1) Costs incurred in executing an application shall not be reimbursed as between the Contracting States.

(2) The amount and nature of the costs incurred shall be communicated to the applicant court.

Article 17

Execution of an application may be refused only if the State applied to considers that execution might impair its sovereign rights, threaten its security or be contrary to its legal principles.

SPECIAL PROVISIONS CONCERNING SERVICE OF DOCUMENTS

Article 18

(1) Where 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 shall be without prejudice to article 13.

(2) In cases other than those specified in paragraph (1), the document shall be served on the addressee 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 19

Service shall be proved either by a certificate of service bearing the date, the signature of the authority effecting service and the signature of the recipient, or by a certificate issued by the court applied to indicating the fact, manner and time of service.

SPECIAL PROVISIONS CONCERNING LEGAL ASSISTANCE

Article 20

(1) Courts to which application is made for legal assistance shall execute the application, applying, where necessary, the same measures of compulsion as they apply in executing applications for legal assistance from the courts of their own State. Measures of compulsion shall not be applied in order to ensure the personal appearance of parties.

(2) The court applied to shall, at the request of the applicant court, notify the parties or the applicant court direct and in good time, by registered letter, of the place and time of performance of the act constituting legal assistance.

TAKING OF EVIDENCE AND SERVICE OF DOCUMENTS
BY DIPLOMATIC AND CONSULAR MISSIONS*Article 21*

The courts of either Contracting State may arrange for evidence to be taken from nationals of their State in the territory of the other Contracting State, and for judicial documents to be served on them there, by diplomatic or consular missions, provided that the persons in question do not possess dual nationality. The threat or use of compulsion shall not be permitted in this connexion.

PART II

DOCUMENTS

Article 22

(1) Officially signed and sealed documents issued by a court, administrative authority or notary public of either Contracting State shall have the evidential value of official documents also in the other Contracting State. The same shall apply to other domestic 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 attach to the authentication by a court, administrative authority or notary public of either Contracting State of a signature affixed to a private document.

Article 23

The documents mentioned in article 22, paragraph (1), including authentications of signatures, which bear 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 in the other Contracting State.

Article 24

(1) The Contracting States shall transmit without delay to each 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 entry into force of this Treaty.

(2) If, after the date of the entry into force of this Treaty, a marginal notation or additional entry is made in respect of a birth, marriage or death already registered, a civil registration certificate which includes the marginal notation or additional entry shall be transmitted in accordance with paragraph (1).

Article 25

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

Article 26

In the transmittal of documents under article 24 and the submission and execution of applications under article 25, the diplomatic or consular channel shall be employed; it shall not be necessary to attach translations.

Article 27

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 28

The Ministry of Justice of the Hungarian People's Republic and the Federal Ministry of Justice of the Republic of Austria shall provide each other on request with information concerning legal provisions in force or formerly in force in their respective States.

PART IV

GENERAL AND FINAL PROVISIONS

Article 29

Where, under the law of one Contracting State, the institution of proceedings in a court of first instance or a higher court is subject to the payment of court fees and the court fixes a time-limit for the subsequent payment of such fees by a party domiciled or resident in the other Contracting State, such time-limit may not be less than one month. The same minimum time-limit shall apply where a party domiciled or resident in the other Contracting State is instructed by the court to correct or supplement a petition.

Article 30

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

Article 31

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

(2) The Treaty is concluded for a period of five years and shall remain 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 period that it is denouncing the Treaty.

(3) If the Treaty is not denounced in accordance with paragraph (2), it shall remain 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 remain 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 Vienna on 9 April 1965 in duplicate in the Hungarian and German languages, both texts being authentic.

For the Hungarian
People's Republic :

PÉTER János

For the Republic
of Austria :

KREISKY

BRODA

FINAL PROTOCOL

In connexion with the signing of the Treaty of today's date between the Hungarian People's Republic and the Republic of Austria concerning legal relations in civil cases and concerning official documents, the following points have been agreed upon :

1. In the Republic of Austria, civil registration certificates shall include marriage certificates issued by the competent denominational authorities of legally recognized Churches and religious associations in respect of marriages celebrated before them before 1 August 1938 and birth certificates (declarations of birth) and death certificates issued by such authorities in respect of births and deaths recorded before 1 January 1939. In so far as relates to Burgenland, the relevant date shall be 1 October 1895 instead of 1 August 1938 or 1 January 1939, as the case may be. The Federal Ministry of Foreign Affairs of the Republic of Austria shall send the Ministry of Foreign Affairs of the Hungarian People's Republic a list of the above-mentioned Churches and religious associations within three months after the date of the entry into force of this Treaty.

In the Hungarian People's Republic, civil registration certificates shall include extracts prepared from registers maintained prior to 1 October 1895 by the competent denominational authorities. The Ministry of Foreign Affairs of the Hungarian People's Republic shall send the Federal Ministry of Foreign Affairs of the Republic of Austria within three months after the date of the entry into force of this Treaty a list of the Churches and religious associations which were authorized to maintain registers.

2. The provisions of article 23 shall also apply to such documents of social insurance bodies of the two Contracting States as do not constitute official documents.

3. Pending the entry into force of a social insurance agreement between the two Contracting States, the provisions of this Treaty, with the exception of

article 16 paragraph (1), shall also apply, as appropriate, to the authorities of the two Contracting States competent to rule in disputes relating to social insurance benefits.

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

DONE at Vienna on 9 April 1965 in duplicate in the Hungarian and German languages, both texts being authentic.

For the Hungarian
People's Republic :

PÉTER János

For the Republic
of Austria :

KREISKY

BRODA

EXCHANGE OF LETTERS

I

Vienna, 9 April 1965

Sir,

With reference to the Treaty between the Hungarian People's Republic and the Republic of Austria concerning legal relations in civil cases and concerning official documents, signed this day, I have the honour to state the following :

It is agreed that this Treaty shall not affect the provisions of other treaties which, on the date of the entry into force of this Treaty, are binding on one or both of the Contracting States.

I should be grateful if you would inform me of your agreement with the foregoing.

Accept, Sir, etc.

KREISKY

His Excellency Mr. János Péter
Minister for Foreign Affairs of the Hungarian People's Republic

II

Vienna, 9 April 1965

Sir,

I have the honour to acknowledge receipt of your letter of 9 April 1965, which reads as follows :

[See letter I]

I hereby state that I am in agreement with the contents of your letter.

Accept, Sir, etc.

PÉTER János

His Excellency Dr. Bruno Kreisky
Minister for Foreign Affairs of the Republic of Austria