

No. 9527

FRANCE
and
SAN MARINO

Convention concerning reciprocal legal assistance in civil, commercial and criminal matters and the reciprocal enforcement of judgements in civil and commercial matters. Signed at Paris on 25 May 1967

Authentic text: French.

Registered by France on 28 April 1969.

FRANCE
et
SAINT-MARIN

Convention relative à l'aide mutuelle judiciaire, en matière civile, commerciale et pénale, et à l'exequatur des jugements, en matière civile et commerciale. Signée à Paris le 25 mai 1967

Texte authentique: français.

Enregistré par la France le 28 avril 1969.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE
FRENCH REPUBLIC AND THE GOVERNMENT OF THE
REPUBLIC OF SAN MARINO CONCERNING RECIPROCAL
LEGAL ASSISTANCE IN CIVIL, COMMERCIAL
AND CRIMINAL MATTERS AND THE RECIPROCAL
ENFORCEMENT OF JUDGEMENTS IN CIVIL AND
COMMERCIAL MATTERS

The Government of the French Republic and the Government of the Republic of San Marino, desiring to regulate questions relating to reciprocal legal assistance in civil, commercial and criminal matters and also to provide for the reciprocal enforcement of judgements in civil and commercial matters, have agreed as follows :

PART I

RECIPROCAL LEGAL ASSISTANCE IN CIVIL, COMMERCIAL
AND CRIMINAL MATTERS

Chapter 1

PRELIMINARY PROVISION

Article 1

The Contracting Parties undertake to render each other legal assistance in any criminal matter which the Party applied to does not consider to be of a political nature.

Chapter 2

ACCESS TO THE COURTS

Article 2

Nationals of each Contracting Party shall, in the territory of the other Party, have free and unimpeded access to the administrative and judicial courts to prosecute and protect their rights and interests. In particular, they shall not be required to offer security for costs, or to pay any deposit of any description, on the ground that they are aliens or that they are not domiciled or resident in the country.

¹ Came into force on 19 February 1969, i.e., two months after the date of the last of the communications by which the Contracting Parties notified each other of the accomplishment of the constitutional procedures required to that effect, in accordance with article 56.

The foregoing paragraph shall, subject to the provisions of public policy in the country in which the proceedings are instituted, apply to bodies corporate constituted or authorized in accordance with the laws of either of the two countries.

Chapter 3

LEGAL ASSISTANCE

Article 3

Nationals of each Contracting Party shall, in the territory of the other Party, be entitled to the benefits of legal assistance under the same conditions as nationals of the latter Party, provided that they comply with the law of the country in which assistance is applied for.

Article 4

The necessary documents shall be issued to the applicant by the authorities of his habitual place of residence if he is resident in the territory of one of the Contracting Parties. If the applicant is resident in a third country, the documents shall be issued by the consul of his country having competence in respect of his place of residence.

If the person concerned is resident in the country in which the application is made, information may be obtained from the authorities of the country of which he is a national.

Chapter 4

TRANSMITTAL AND SERVICE OF JUDICIAL AND EXTRA-JUDICIAL DOCUMENTS

Article 5

In civil and commercial matters, and also in criminal matters, judicial and extra-judicial documents which are to be served in the territory of one of the Contracting Parties shall be transmitted directly between the Ministry of Justice of the French Republic and the Secretariat of State for Foreign Affairs of the Republic of San Marino.

The provisions of the foregoing paragraph shall be without prejudice to the right of the Contracting Parties to cause judicial and extra-judicial documents addressed to their nationals to be served directly by their respective consuls. Where there is a conflict between the legislation of the two countries, the nationality of the addressee shall be determined by the law of the country in which service is to be effected.

Article 6

In civil and commercial matters, the letter of transmittal or covering note shall be drafted in the language of the applicant authority and shall contain the following information :

- the designation of the authority issuing the document ;
- the nature of the document in question ;
- the names and status of the parties ;
- the name and address of the addressee ; and
- in criminal matters, the definition of the offence.

Article 7

If the authority applied to does not have jurisdiction, it shall of its own motion transmit the application to the authority having jurisdiction, and shall immediately notify the applicant authority accordingly.

Article 8

The authority applied to shall confine itself to causing the document to be served on the addressee. Confirmation of service shall be given by means of a receipt dated and signed by the addressee, or a certificate from the authority applied to stating that service has been effected and indicating the manner of service. Such receipt or certificate shall be sent immediately to the applicant authority.

If the addressee refuses to accept the document, the authority applied to shall return it forthwith to the applicant authority, stating the reasons why service could not be effected.

Certification of the addressee's refusal to accept the document shall be deemed to be equivalent to service of the document.

Article 9

No charge shall be made for the service of judicial and extra-judicial documents.

Article 10

In civil and commercial matters, the provisions of the foregoing articles shall be without prejudice to the right of interested parties residing in the territory of either of the Contracting Parties to cause documents to be served in either of the two countries, on persons residing in France by law officers and on persons residing in San Marino by the *Cursore*.

Chapter 5

TRANSMISSION AND EXECUTION OF APPLICATIONS FOR LEGAL ASSISTANCE

Article 11

In civil and commercial matters, and also in criminal matters, applications for legal assistance which are to be executed in the territory of one of the Contracting Parties shall be made and executed by the judicial authorities.

They shall be transmitted directly between the Ministry of Justice of the French Republic and the Secretariat of State for Foreign Affairs of the Republic of San Marino.

In urgent cases, applications for legal assistance may be addressed directly to the public prosecutor's department (*Parquet*) of the authority having jurisdiction in the State applied to, by the public prosecutor's department of the authority having jurisdiction in the applicant State.

The provisions of this article shall be without prejudice to the right of the Contracting Parties to cause their diplomatic and consular representatives to execute directly applications for the interrogation of their own nationals. Where there is a conflict between the legislation of the two countries, the nationality of the person whose interrogation is applied for shall be determined by the law of the country in which the application is to be executed.

Article 12

If the authority applied to does not have jurisdiction, it shall of its own motion transmit the application for legal assistance to the authority having jurisdiction, and shall immediately notify the applicant authority accordingly.

Article 13

The authority applied to may refuse to execute an application for legal assistance if, under the law of its country, it is not competent to do so or if the action requested is likely to be prejudicial to the sovereignty, security or public order of the country in which execution is sought.

Article 14

Persons from whom evidence has been applied for shall be requested to appear by simple administrative notification. If they refuse to appear in answer to the notification, the authority applied to shall use the measures of compulsion prescribed by the law of its country.

Article 15

At the express request of the applicant authority, the authority applied to shall, in the absence of any provisions to the contrary in the legislation of its country :

- (1) execute the application in a special manner ;
- (2) notify the applicant authority in due time of the date and place of the execution of the application, so that the parties concerned can be present.

Article 16

Applications for legal assistance in civil and commercial matters shall be accompanied by a translation in the language of the authority applied to. The translation shall be certified as accurate by a sworn translator or a translator who has taken an oath in accordance with the laws of the applicant country.

Article 17

No charge shall be made for executing applications for legal assistance, except in respect of fees for experts.

Chapter 6

APPEARANCE OF WITNESSES IN CRIMINAL MATTERS

Article 18

Where the personal appearance of a witness or expert is necessary in criminal proceedings, an application to this effect shall be transmitted through the channel prescribed in the first paragraph of article 5.

The witness or expert shall be obliged to comply with the request addressed to him. The travel and subsistence allowances, calculated as from the place of residence of the witness or expert, shall in this case be at least equal to the allowances prescribed in the rates and regulations in force in the State in which he is to appear.

At the request of the witness or expert, the authorities of his place of residence may advance him all or part of the travel expenses, which shall be refunded by the applicant State.

No witness or expert, whatever his nationality, who has been summoned in one of the two States and appears voluntarily before the judicial authorities of the other State may be prosecuted or detained in respect of acts or criminal convictions anterior to his departure from the territory of the State applied to.

This immunity shall cease when the witness or expert, having had an opportunity to leave the territory of the applicant State for an uninterrupted period of thirty days from the date on which his presence was no longer required by the judicial authorities, has nevertheless remained in the territory of the applicant State.

Article 19

The transfer of witnesses held in custody may be applied for through the channel prescribed in the first paragraph of article 5.

Such applications shall, in the absence of any particular reasons to the contrary, be granted on the understanding that the said persons held in custody are to be returned as soon as possible.

Chapter 7

TRANSMITTAL OF CIVIL REGISTRATION DOCUMENTS AND AUTHENTICATIONS

Article 20

Each Contracting Party shall transmit free of charge copies of civil registration documents drawn up in its territory and relating to nationals of the other Party, in cases where the latter Party requests such documents for administrative purposes or on behalf of any of its nationals who are without means.

Each Party shall also transmit free of charge copies of civil registration documents drawn up in its territory and relating to aliens who are nationals of a third State or stateless persons and are resident in the territory of the other Contracting Party, in cases where such documents are requested for administrative purposes or on behalf of applicants without means.

Civil registration documents and copies thereof drawn up in diplomatic or consular missions of the French Republic or the Republic of San Marino shall be considered as civil registration documents drawn up in the respective territories of the Contracting Parties.

Transmittal of a copy of a civil registration document shall be without prejudice to the nationality of the person concerned in respect of the two countries.

Requests for the transmittal of civil registration documents shall be communicated through the diplomatic channel.

Article 21

For the purposes of article 20, the term “civil registration document” shall be understood to include :

— birth certificates ;

- declarations of stillbirths ;
- certificates of affiliation, drawn up by civil registration officers, for children born out of wedlock ;
- marriage certificates ;
- death certificates ;
- copies of judicial decisions or decrees relating to divorce, annulment of marriage and separation ;
- copies of judicial orders, decisions or decrees relating to civil status.

Article 22

The following documents drawn up by the authorities of each Contracting Party shall, in the absence of any evidence to the contrary, be accepted without authentication as elements of proof in the respective territories of the Parties :

- copies of civil registration documents as listed in article 21 ;
- copies of judgements, orders, decisions, decrees and other judicial acts by the courts of France and San Marino ;
- affidavits, written statements or other legal documents registered or deposited with such courts ;
- notarial acts ;
- certificates of existence in respect of life annuitants.

Article 23

The documents listed in article 22 must bear the signature and official seal of the authority competent to issue them and, in the case of copies, they must be certified by the said authority as true copies of the original. In any case, they shall be prepared physically in such a manner as to ensure that their authenticity is evident.

Chapter 8

EXCHANGE OF INFORMATION FROM JUDICIAL RECORDS

Article 24

The Contracting Parties shall inform each other, through the channel prescribed in the first paragraph of article 5, of sentences pronounced by the judicial authorities of one Contracting Party on nationals of the other Party and entered in the judicial records in their respective territories.

Such information shall also be provided where the person sentenced appears to be a national of both Contracting Parties at the same time.

Article 25

The Contracting Parties shall, on request, provide each other with extracts from the judicial records in accordance with the law of the Party applied to.

Applications for extracts from the judicial records shall be transmitted through the channel prescribed in the first paragraph of article 5. The reasons for the applications shall be stated.

PART II

ENFORCEABILITY OF JUDGEMENTS IN CIVIL
AND COMMERCIAL MATTERS

Chapter I

“ RES JUDICATA ” AND ENFORCEMENT

Article 26

Judgements rendered in civil and commercial matters by the courts of one Contracting Party shall automatically have the force of *res judicata* in the territory of the other Party if they satisfy the following conditions :

- (1) that the judgement has been rendered by a court having jurisdiction under the rules set forth in chapter II below to the extent that they are applicable or, if they are not applicable, under the rules established by the legislation of the country in which the judgement is invoked ;
- (2) that the judgement has applied the law applicable to the case under the rules for the solution of conflicts of laws in the State in which the judgement is enforced ;
- (3) that nothing in the judgement is contrary to public policy or the principles of public law in the country in which it is invoked ;
- (4) that the judgement has acquired the force of *res judicata* and is enforceable under the law of the country in which it was rendered ;
- (5) that the parties were legally summoned, represented or declared in default and, in the case of a judgement by default, that the summons was served on the defaulting party in good time ;
- (6) that the judgement does not conflict with any earlier judgement on the same subject by a court of the country in which it is invoked, or that the same dispute had not been submitted by the same parties to a court of the same country before the judgement which is to be enforced was rendered.

Article 27

Judgements rendered in civil or commercial matters by courts of one Contracting Party shall not give grounds for distraint by the authorities of the other Party, and shall not become the subject of any formal public act by the said authorities, such as registration in the public records, until they have been declared enforceable in the latter country.

Judgements by the courts of one of the two States which have become enforceable in the territory of the other State shall serve as grounds for judicial mortgages in the latter State, under the same conditions as judgements rendered by the national courts.

Article 28

Authorization of enforcement shall be granted, on the application of any party concerned, by the authority having jurisdiction under the law of the country in which application is made.

The said authority shall confine itself to determining whether the conditions set forth in article 26 have been satisfied ; it shall undertake this investigation automatically and shall state its findings in its decision. The decision shall have effect between all the parties to the application for authorization of enforcement and throughout the territory.

Authorization of enforcement may be granted on a partial basis only for one or another item in the foreign judgement.

The decision granting authorization of enforcement shall, if necessary, prescribe measures to ensure that the foreign judgement receives the same publicity as if it had been rendered in the country in which it is declared enforceable.

The procedure for applying for authorization of enforcement shall be governed by the law of the country in which enforcement is requested.

Article 29

A party invoking a judgement or applying for the enforcement thereof shall produce :

- (1) a copy of the judgement duly certified ;
- (2) the original certificate of notification of the judgement or any other document constituting notification ;
- (3) documentary evidence that the judgement has acquired the force of *res judicata* and is enforceable ;

- (4) an authenticated copy of the summons served on the defaulting party and any documentary evidence that the summons reached him in good time ;
- (5) a translation of the documents listed above, certified as accurate in accordance with the rules laid down by the law of the country in which the decision is invoked or by treaty, except where a waiver is granted by the competent judicial authority.

Article 30

Valid arbitral awards made in one of the two States shall be recognized in the other State and may be declared enforceable therein if they satisfy the conditions prescribed in article 26 to the extent that the said conditions are applicable.

Authorization of enforcement shall be granted by the authority competent under the law of the country in which application is made.

Article 31

Authentic acts enforceable in one of the two States may be declared enforceable in the other State by the authority competent under the law of the country in which enforcement is applied for.

The said authority shall confine itself to determining whether such acts have been duly authenticated in the country in which they were drawn up and whether enforcement of the provisions in question is contrary to the public policy or principles of public law in the country in which authorization of enforcement is applied for.

Article 32

Conventional mortgages concluded in one of the two States shall be registered and have effect in the other State only after the instruments containing the stipulated terms thereof have been declared enforceable by the authority competent under the law of the country in which registration is applied for. The said authority shall confine itself to determining whether the instruments and powers of attorney supplementary to the mortgage agreement satisfy all the conditions required for them to have legal force in the country in which they were drawn up.

The foregoing provisions shall apply also to instruments concluded in either of the two States to record assent to the satisfaction or abatement of a mortgage.

Article 33

The provisions of this chapter shall apply whatever the nationality of the parties.

Article 34

Judgements rendered by courts of one of the two States in favour of a party receiving free legal aid shall be declared enforceable without charge in the territory of the other State, and the party applying for enforcement of the judgement shall not for this purpose be required to re-apply for free legal aid.

Chapter 2

JURISDICTION

Article 35

The rules concerning jurisdiction in this chapter are intended solely for the application of article 26, paragraph (1).

Article 36

In personal matters, the courts having jurisdiction in proceedings between a national of one Contracting Party and a national of the other Contracting Party shall be the courts of the country in which the defendant has his domicile or, if he is not domiciled in either of the two countries, the courts of the country in which he has his habitual residence.

If in proceedings of the kind referred to in the foregoing paragraph there is more than one defendant, the plaintiff may elect to bring his case before the courts of the country of domicile of one of the defendants or, if none of the defendants has his domicile in either of the two countries, before the courts of the country in which one of them has his habitual residence.

Article 37

In proceedings between a national of one Contracting Party and a national of the other Contracting Party, when a domicile determining jurisdiction has been elected in the country in which a contract has been concluded or is to be executed, the courts of the country in which domicile has been elected shall be competent to hear cases relating to the contract. The election of domicile must have been expressly accepted by the parties, and specifically in respect of each contract. If the domicile has been elected for only one of the parties, that party shall retain the right to institute proceedings before any judge having competence.

Article 38

Nationals of either Contracting Party owning a commercial, industrial or other establishment or branch thereof in either of the two countries shall, for the hearing of any dispute relating to contracts concluded directly by the establish-

ment or branch, be deemed to have elected domicile in the country in which the establishment or branch is situated.

Article 39

Where the subject of the proceedings is a contract deemed to be a commercial matter under the law of the country in which the proceedings are instituted, a plaintiff who is a national of either Contracting Party may institute proceedings before the courts of the country in which the contract was concluded or the courts of the country in which it is to be executed.

Article 40

Actions for damages arising from an offence or a technical offence may be brought before the courts of the country in which the tort has occurred.

Article 41

The courts of the country in which immovable property is situated shall have jurisdiction in all proceedings relating to the possession or ownership of the said property and in proceedings relating to rights *in rem* in respect of the property.

Actions relating to contracts concerning the property, which are to be executed in the place where property is situated, may be brought before the same courts.

Article 42

In proceedings between a national of one Contracting Party and a national of the other Contracting Party, the courts of the State in which a deceased person had his domicile shall be entitled, in respect of the movable and immovable property comprising the estate, to hear :

- (1) actions claiming the rights of an heir, actions for partition and all other actions between joint heirs and actions against the executor, until partition ;
- (2) actions for avoidance or rescission of a partition, actions for the guarantee of shares and actions by legatees and creditors against an heir, until two years from the death of the deceased.

Article 43

The courts of the country in which a claim is entered in accordance with the rules set forth in this chapter may hear claims for compensation, incidental and subsidiary claims and counter-claims.

Article 44

The courts of either Contracting State shall, if one of the parties so requests, refrain from proceeding with actions brought before them when such actions are already pending before the courts of the other State or when they are connected with other actions involving the same parties already pending before the said courts, provided that the latter are competent under the rules set forth in this Part.

Only actions based on the same grounds or relating to the same matter may be deemed to be so connected.

Article 45

The word “ domicile ”, as used in this chapter, shall mean :

- (1) in the case of legally competent persons who are of age, of emancipated minors or of persons of age who are required to have legal assistance only for the execution of certain acts, the place which is the main seat of their interests ;
- (2) in the case of minors, the place of the domicile of their legal representative ;
- (3) in the case of persons who are of age but are not entitled to administer their own property, and of non-emancipated minors who have lost both their parents, the place of domicile of the administrator of the property or the guardian ;
- (4) in the case of a married woman, the place of her husband's domicile or, if the husband's domicile is unknown or the woman is separated from bed and board or authorized to have a separate domicile, the place which is the main seat of her interests ;
- (5) in the case of companies, the site of their registered head office.

Chapter 3

MISCELLANEOUS PROVISIONS

Article 46

In proceedings in civil and commercial matters instituted before the French courts by nationals of San Marino and before the courts of San Marino by nationals of France, judges may not disclaim jurisdiction on grounds of the foreign nationality of the plaintiff.

Article 47

Provisions in the legislation of either of the two States, to the effect that the courts of that State shall have jurisdiction solely by reason of the nationality of

the plaintiff in proceedings relating to obligations arising from a contract or an implied contract or from an offence or technical offence, shall not be invoked in respect of nationals of the other State in cases :

- (1) where the defendant has his domicile or residence in the country of which he is a national ;
- (2) where the obligation has been incurred or is to be performed in the country of which the defendant is a national.

The foregoing provision shall be applied automatically by the courts of each of the two countries.

Article 58

The authorities of either of the two countries may, in urgent cases, be requested to take provisional or protective measures as provided for in the legislation of their country, regardless of which courts have jurisdiction on the substance of the case.

Article 59

All the provisions of this Convention shall apply to commercial enterprises constituted in accordance with the laws of one of the two countries and having their registered head office in that country.

Article 50

Where a French national domiciled in France is a party in proceedings before a court of San Marino or is required to perform a formal act in San Marino and where a national of San Marino domiciled in San Marino is a party in proceedings before a French court or is required to perform a formal act in France, the respite prescribed by procedural law shall be increased by one month, unless the law itself allows a longer period of respite.

Article 51

A change of nationality in the course of proceedings shall not affect the competence of an authority before which the proceedings have been duly instituted.

PART III

FINAL PROVISIONS

Article 52

Any dispute between the Contracting Parties relating to the interpretation or application of this Convention, which cannot be settled through the diplomatic channel, shall be submitted at the request of either Party to an Arbitration Commission consisting of three members. Each of the two Governments shall appoint one arbitrator within a period of one month and the two arbitrators shall, within two months of their own appointment, designate a referee who will act as chairman of the arbitration Commission. If the aforementioned appointments are not made within the period specified, either of the two Governments may request the President of the International Court of Justice to make the necessary appointments.

The Arbitration Commission shall establish its own rules of procedure. Its decisions shall be by majority vote and shall be final and binding.

Article 53

For the purposes of this Convention, the expression “ national ” shall mean :

- in the case of France, French nationals ;
- in the case of San Marino, citizens of San Marino.

Article 54

This Convention shall be applicable :

- in the case of France, to the European and overseas departments of the French Republic ;
- in the case of San Marino, to the territory of San Marino.

Article 55

Articles 13, 14, 15 and 16 of the Extradition Convention between France and San Marino of 30 April 1926¹ shall cease to have effect.

Article 56

Each Contracting Party shall notify the other of the completion of the procedures required under its Constitution in order to give effect in its territory to the

¹ League of Nations, *Treaty Series*, Vol. LXXXIX, p. 9.

provisions of this Convention, which enter into force two months after the date of the second such notification.

It shall remain in force until the expiry of one year from the date on which either Contracting Party gives notice of its intention to terminate the Convention.

DONE at Paris, on 25 May 1967, in duplicate in the French language.

For the Government
of the French Republic :
Gilbert DE CHAMBRUN

For the Government
of the Republic of San Marino :
M. PINCI