

No. 9625

AUSTRIA
and
ROMANIA

Treaty concerning legal assistance in civil matters, including matters of family law, and concerning official documents (with Protocol). Signed at Vienna on 17 November 1965

Authentic texts: German and Romanian.

Registered by Austria on 13 June 1969.

AUTRICHE
et
ROUMANIE

Traité concernant l'assistance juridique en matière civile, y compris les questions relatives au droit de la famille, et les actes instrumentaires (avec Protocole). Signé à Vienne le 17 novembre 1965

Textes authentiques : allemand et roumain.

Enregistré par l'Autriche le 13 juin 1969.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE REPUBLIC OF AUSTRIA AND
THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING
LEGAL ASSISTANCE IN CIVIL MATTERS, INCLUDING
MATTERS OF FAMILY LAW, AND CONCERNING OFFI-
CIAL DOCUMENTS

The Federal President of the Republic of Austria and the Council of State of the Socialist Republic of Romania have agreed to conclude a treaty concerning legal assistance in civil matters, including matters of family law, and concerning official documents and for this purpose have appointed as their plenipotentiaries :

The Federal President of the Republic of Austria :

Dr. Bruno Kreisky, Federal Minister for Foreign Affairs;
Dr. Christian Broda, Federal Minister of Justice;

The Council of State of the Socialist Republic of Romania :

Mr. Corneliu Mănescu, Minister for Foreign Affairs,

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

Chapter I

GENERAL PROVISIONS

Article 1

LEGAL PROTECTION

1. Nationals of either Contracting State shall have free and unimpeded access to the courts of the other Contracting State and may institute proceedings, present petitions and 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 25 April 1969, i.e., on the sixtieth day following the exchange of the instruments of ratification, which took place at Bucharest on 24 February 1969, in accordance with article 30 (1).

Article 2

EXEMPTION FROM DEPOSIT OF SECURITY FOR LEGAL COSTS

Nationals of one Contracting State appearing before the courts of the other Contracting State as plaintiffs (applicants) or intervenors and having their domicile or habitual residence in the territory of either Contracting State shall not be required to deposit security for legal costs on the ground that they are aliens or have no domicile or habitual residence in the State to which the court belongs.

Article 3

METHOD OF COMMUNICATION

In matters governed by this Treaty, the courts of the Contracting States shall, save as otherwise provided in this Treaty, communicate with one another through their Ministries of Justice.

Article 4

LANGUAGES AND TRANSLATIONS

1. The courts of either Contracting State may use their own language in applications submitted to the courts of the other Contracting State pursuant to the provisions of this Treaty. The applications shall bear the official seal; they shall not require authentication.

2. Documents annexed to the applications specified in paragraph 1 shall, save as otherwise provided in this Treaty, be accompanied by authenticated translations into the language of the Contracting State to which the court applied to belongs.

3. The translations referred to in paragraph 2 shall be authenticated by a translator officially employed by one of the Contracting States or by a competent authority of one of the Contracting States including, where so authorized, a diplomatic or consular mission of the State to which the applicant court belongs; no further authentication shall be required.

Article 5

LEGAL INFORMATION

The Ministries of Justice of the Contracting States shall provide each other, on request, with information concerning the provisions of civil law, including family law and the law of civil procedure, in force or formerly in force in their respective States.

Article 6

STATE NOTARIES' OFFICES AND GUARDIANSHIP AUTHORITIES

The provisions of this Treaty concerning courts shall likewise apply to the State notaries' offices and guardianship authorities of the Socialist Republic of Romania.

Chapter II

ENFORCEMENT OF AWARDS OF COSTS

Article 7

1. Where a plaintiff (applicant) or intervenor, exempt from depositing security for legal costs by virtue of article 2 or the law of the State in which the complaint was filed, is required in pursuance of a final and enforceable judgment to pay legal costs, the award of costs shall on application by the successful party be enforced in the other Contracting State.

2. The provisions of paragraph 1 shall also apply to decisions retrospectively fixing the amount of the legal costs.

Article 8

1. Applications for enforcement may be made either to the court competent to decide thereon or to the court which rendered judgement concerning legal costs at first instance.

2. If application is made to the court of one Contracting State which rendered judgement at first instance, it shall be transmitted to the competent court of the other Contracting State.

3. The judgements referred to in article 7 shall be enforced, with no prior hearing of the parties but without prejudice to the right of the unsuccessful party to appeal, in accordance with the law of the State in which enforcement takes place.

Article 9

1. The Party submitting the application must produce :
- (a) A certified copy of the substantive part of the judgement, with endorsement of its finality and enforceability;
 - (b) An authenticated translation thereof into the language of the court competent to decide on the application;

(c) An authenticated translation of the application into the language of the court competent to decide thereon, where the application is made to the court which rendered judgement at first instance.

2. The costs of the endorsement provided for in paragraph 1 (a) and of the translations provided for in paragraphs 1 (b) and (c) shall be regarded as legal costs. Such costs shall, on request, be fixed by the court required to decide on the application for enforcement.

Chapter III

EXEMPTION FROM LEGAL STAMP TAX AND OTHER BENEFITS

Article 10

1. Nationals of one Contracting State appearing before the courts of the other Contracting State shall be admitted to benefits (judicial assistance for poor persons) granted in respect of income, property and family status under the same conditions and to the same extent as nationals of the latter State.

2. Where a party to an action in one Contracting State 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 11

1. The certificate relating to income, property and family status necessary for obtaining the benefits referred to in article 10 shall be issued by the competent authority of the Contracting State in which the petitioner has his domicile or habitual residence.

2. Where the petitioner has his domicile or habitual residence in a third 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 12

The authority seized of a petition for the authorization of the benefits referred to in article 10, paragraph 1, shall decide thereon in accordance with the law of its own State and may, if necessary, request additional information.

Article 13

1. Where a national of one Contracting State having his domicile or habitual residence in either Contracting State and appearing before a court of the other Contracting State wishes to avail himself of the benefits referred to in article 10, paragraph 1, he may so petition the competent court of his place of domicile or habitual residence, either in writing or orally, in accordance with the law of the latter State.

2. The court petitioned in accordance with paragraph 1 shall refer the petition, with the certificates and other documents provided for in article 11, to the competent court of the other Contracting State.

Article 14

1. The fact that a petition submitted pursuant to article 13, paragraph 1, is not drawn up in the language of the authority required to rule on it shall not affect its treatment. Arrangements for the translation of the petition, of the certificate provided for in article 11 and of any other documents shall be made by the authority petitioned.

2. If the benefits are authorized, the competent court shall appoint, of its own motion, a representative for the petitioner in accordance with the law of its own State.

Chapter IV

APPLICATIONS FOR SERVICE OF DOCUMENTS AND LEGAL ASSISTANCE

Article 15

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

Article 16

An application for service of documents or legal assistance must contain the following particulars :

- (a) The subject-matter of the case to which the application relates;
- (b) The given names, surnames, status in the action, occupations and domicile or residence of the parties and in the case of bodies corporate, including commercial companies, their names and domicile;

- (c) The given names, family names and addresses of their legal representatives, where appropriate.
- (d) The necessary information concerning the subject of the application and specifically where the application is for service of documents, the address of the addressee and, where the application is for legal assistance, the circumstances concerning which evidence is to be obtained and, where appropriate, the questions to be put to the persons from whom evidence is to be taken.

Article 17

1. The mode of execution of applications for service of documents and legal assistance shall be determined by the law of the Contracting State to which the court applied to belongs.

2. However, the court applied to shall, if the applicant court so requests, follow a specified procedure provided that such procedure is not contrary to the legal principles of its own State.

Article 18

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, as far as possible, determine the correct address.

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

Article 19

1. Where the documents to be served are drawn up in the language of the court applied to or are 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 17.

2. In cases other than those specified in paragraph 1, the documents shall be served on the addressee only if he is willing to accept them.

Article 20

Service shall be proved by a certificate of service or an official report, which must bear the signatures of the recipient and of the authority effecting service and indicate the date of service.

Article 21

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, even where they are prescribed by the law of a Contracting State, 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 in due time of the place and date of execution of the application for legal assistance.

Article 22

Where an application cannot be executed 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 23

1. Costs incurred in executing an application shall not be reimbursed as between the Contracting States, apart from experts' fees and other expenses incurred in connexion with the taking of expert testimony.

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

Article 24

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

Chapter V

OFFICIAL DOCUMENTS

Article 25

1. Officially signed and sealed documents issued by a court or administrative authority of either Contracting State, within the limits of its official powers, shall have the evidential value of official documents before the courts and administrative authorities of the other Contracting State. This provision shall also 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 attach to the authentication by a court or administrative authority of either Contracting State or by an Austrian notary public of a signature affixed to a private document.

Article 26

The documents referred to in article 25, paragraph 1, shall require no further legalization for use in the courts or by the administrative authorities of the other Contracting State.

Article 27

1. The Contracting States shall, on request, transmit to each other, free of taxes and charges, civil registration certificates and authenticated copies of judicial decisions in matters relating to personal status for official use by their authorities. The application shall adequately explain the official interest in the matter.

2. In applying the provisions of paragraph 1 the diplomatic channel shall be employed.

Article 28

If the death of a national of one Contracting State is registered in the other Contracting State, the competent authority of the latter State shall immediately notify the diplomatic mission or consular office of the Contracting State of which the deceased was a national.

Chapter VI

FINAL PROVISIONS

Article 29

This Treaty shall not affect the provisions of any other treaty binding on one or both Contracting States at the time of the entry into force of this Treaty.

Article 30

1. This Treaty shall be subject to ratification. The exchange of the instruments of ratification shall take place at Bucharest as soon as possible.

2. This Treaty shall enter into force on the sixtieth day following the exchange of the instruments of ratification.

Article 31

This Treaty is concluded for an indefinite period. Either Contracting State may give written notice of its denunciation to the other Contracting State. The denunciation shall take effect one year after the date on which notice was given.

DONE at Vienna on 17 November 1965 in duplicate in the German and Romanian languages, both texts being equally authentic.

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

For the Republic of Austria :

KREISKY
BRODA

For the Socialist Republic of Romania :

C. MĂNESCU

PROTOCOL TO THE TREATY BETWEEN THE REPUBLIC OF AUSTRIA AND THE SOCIALIST REPUBLIC OF ROMANIA CONCERNING LEGAL ASSISTANCE IN CIVIL MATTERS, INCLUDING MATTERS OF FAMILY LAW, AND CONCERNING OFFICIAL DOCUMENTS

In connexion with the signing of the above Treaty of today's date the following points have been agreed upon :

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.

The Federal Ministry of Foreign Affairs of the Republic of Austria shall send the Ministry of Foreign Affairs of the Socialist Republic of Romania a list of such Churches and religious associations within three months after the date of the entry into force of this Treaty.

DONE at Vienna on 17 November 1965 in duplicate in the German and Romanian languages, both texts being equally authentic.

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

For the Republic of Austria:

KREISKY
BRODA

For the Socialist Republic of Romania :

C. MĂNESCU