

No. 13237

**FRANCE
and
TUNISIA**

Convention on reciprocal legal assistance in civil and commercial matters and the recognition and execution of judicial decisions (with additional protocol). Signed at Paris on 28 June 1972

Authentic texts: French and Arabic.

Registered by France on 24 April 1974.

**FRANCE
et
TUNISIE**

Convention relative à l'entraide judiciaire en matière civile et commerciale et à la reconnaissance et à l'exécution des décisions judiciaires (avec protocole additionnel). Signée à Paris le 28 juin 1972

Textes authentiques : français et arabe.

Enregistrée par la France le 24 avril 1974.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE
 REPUBLIC OF TUNISIA ON RECIPROCAL LEGAL ASSISTANCE
 IN CIVIL AND COMMERCIAL MATTERS AND THE RECOGNITION
 AND EXECUTION OF JUDICIAL DECISIONS

The President of the French Republic and the President of the Republic of Tunisia,

Desiring to maintain and strengthen the existing co-operation between the two countries with regard to reciprocal legal assistance and the recognition and execution of judicial decisions,

Have decided to conclude this Convention and to that end have appointed as their plenipotentiaries:

The President of the French Republic:

Mr. Maurice Schumann, Minister for Foreign Affairs;

The President of the Republic of Tunisia:

Mr. Mohamed Masmoudi, Minister for Foreign Affairs,
 who, having exchanged their full powers, found in good and due form,

Have agreed on the following provisions:

PART I

RECIPROCAL LEGAL ASSISTANCE

Chapter I. PRELIMINARY PROVISIONS

Article 1. Nationals of each High Contracting Party shall, in the territory of the other, have free and unimpeded access to both judicial and administrative courts for the prosecution and defence of their rights and interests.

Article 2. Bodies corporate which have their headquarters in one of the two States and are incorporated in accordance with the laws of that State shall be subject to the provisions of this Convention in so far as those provisions are applicable to them.

Chapter II. SECURITY FOR COSTS AND PENALTIES
 BY FOREIGN PLAINTIFFS (“CAUTIO JUDICATUM SOLVI”)

Article 3. No security or deposit of any kind shall be imposed, by reason of their status as aliens or the absence of domicile or residence in the territory of the other State, on nationals of either High Contracting Party.

Chapter III. LEGAL AID

Article 4. Nationals of each High Contracting Party shall, in the territory of

¹ Came into force on 1 January 1974, i.e., the first day of the second month following the exchange of instruments of ratification, which took place at Tunis on 30 November 1973, in accordance with article 27.

the other, be entitled to legal aid on the same basis as nationals of that country, provided that they comply with the law of the State in which the aid is applied for.

Article 5. 1. The certificate of need shall be issued to an applicant by the authorities of his normal place of residence, if he is resident in the territory of either State. If the person concerned is resident in a third country, the certificate shall be issued by the diplomatic or consular authority of his country competent for the territory concerned.

2. When the person concerned is resident in the State in which the application is made, additional information may be sought from the authorities of the State of which he is a national.

Chapter IV. TRANSMITTAL AND SERVICE OF WRITS AND EXTRA-JUDICIAL DOCUMENTS

Article 6. 1. In civil and commercial matters, writs and extra-judicial documents to be served on persons resident in the territory of one of the High Contracting Parties shall be transmitted through the diplomatic channel.

2. The provisions of the preceding paragraph shall be without prejudice to the right of the High Contracting Parties to cause all writs or extra-judicial documents addressed to their own nationals to be served directly by their respective diplomatic or consular authorities. The nationality of the addressee shall be determined in accordance with the law of the State in the territory of which service is to be effected.

3. The provisions of paragraph 1 of this article shall not preclude nationals of either State residing in the territory of the other from serving or having served any legal documents on persons residing in the same territory, provided that service takes place in accordance with the procedures in force in the country in which it is to be effected.

Article 7. 1. Writs or extra-judicial documents and, if appropriate, annexed documents, shall be accompanied by a covering note or letter specifying:

- the authority issuing the document;
- the nature of the document to be served;
- the names and status of the parties;
- the name and address of the addressee.

2. The covering note or letter provided for in the preceding paragraph shall be written in the language of the requested State or accompanied by a translation into that language.

Article 8. 1. The requested State shall confine itself to having the document served on the addressee; proof of service shall consist either of a receipt duly dated and signed by the person concerned or of a report of notification prepared by the competent authority of the requested State, which shall state that service has been effected and indicate the date and manner of service. The receipt or report shall be transmitted to the requesting authority.

2. On the express application of the requesting State, the document may be served in the manner laid down in the legislation of the requested State for substituted service of such documents, provided that the said document and, if appropriate, the annexed documents are written in the language of the requested

State or accompanied by translations into that language, prepared in accordance with the legislation of the requesting State.

3. When it has not been possible to serve the document, the requested State shall return it forthwith to the requesting State and shall state the reason why service could not be effected.

Article 9. 1. Each High Contracting Party shall bear the costs of service effected in its territory.

2. However, in the circumstances described in paragraph 2 of the preceding article, such costs shall be borne by the requesting State.

Chapter V. TRANSMITTAL AND EXECUTION OF LETTERS ROGATORY

Article 10. 1. In civil and commercial matters, letters rogatory to be executed in the territory of one of the High Contracting Parties shall be issued and executed by the judicial authorities. They shall be transmitted and served through the diplomatic channel.

2. Letters rogatory shall be written in the language of the requesting State. However, they may be accompanied by a translation in the language of the requested State.

3. The provisions of the preceding paragraphs shall be without prejudice to the right of the High Contracting Parties to cause letters rogatory in civil or commercial matters concerning the hearing of their own nationals to be executed directly by their respective diplomatic or consular authorities. The nationality of the person in respect of whom the hearing is requested shall be determined by the law of the State in which the letter rogatory is to be executed.

Article 11. The requested authority may refuse to execute a letter rogatory if the letter rogatory is liable to impair the sovereignty, security or public policy of the State in which it is to be executed.

Article 12. 1. In executing a letter rogatory, the competent authority of the requested State shall apply the law of that State with regard to the procedures to be observed.

2. Persons whose testimony is requested shall be invited to appear by ordinary administrative notice. If they refuse to comply with such invitation, the competent authority of the requested State may apply to them the measures provided for in its national legislation.

Article 13. On the express application of the requesting authority, the requested authority shall:

- (a) Execute the letter rogatory by means of a special procedure, if that procedure does not conflict with its national legislation;
- (b) Inform the requesting authority in good time of the date and place of execution of the letter rogatory, so that the parties concerned may be present in accordance with the conditions laid down by the legislation of the State in which execution is to take place.

Article 14. The execution of letters rogatory shall not give rise to the refunding to the requesting State of any costs save the fees of experts.

PART II

RECOGNITION AND EXECUTION OF JUDICIAL DECISIONS

Article 15. In civil and commercial matters, decisions in adversary and non-adversary proceedings rendered by the courts in France or Tunisia shall automatically be recognized in the territory of the other State provided they satisfy the following conditions:

- (a) The decision was rendered by a court which is competent under article 16 of this Convention;
- (b) The party against whom judgement was given appeared or was duly summoned;
- (c) The decision is no longer subject to ordinary appeal under the law of the State in which it was rendered and is enforceable in that State;
- (d) The decision contains nothing repugnant to the public policy of the State in which it is invoked or to the principle of public law applicable in that State;
- (e) The decision likewise does not conflict with a judicial decision rendered in the requested State and having the force of *res judicata*;
- (f) No court in the requested State has, prior to submission of the request to the court which rendered the decision the execution of which is requested, been informed of proceedings between the same parties based on the same facts and having the same object.

Article 16. 1. The judicial authority of the State in which the decision was rendered shall be deemed to be competent for the purposes of the preceding article:

- (a) When, in the case of a personal or property action, the defendant, or one of the defendants in the case of a joint action, was domiciled or customarily resident in that State when he received notice of the writ instituting proceedings;
- (b) When the defendant had a commercial or industrial establishment or branch establishment in the State in which the decision was rendered and had been summoned to appear in that State in an action relating to the operation of that establishment or branch establishment;
- (c) In the case of a counter-claim based on the same facts or legal documents as the principal claim;
- (d) In the case of a dispute between nationals of the State in which the decision was rendered concerning personal status or legal capacity or personal and pecuniary rights and obligations deriving from family relationships; and in the case of action for divorce or annulment of marriage, if the plaintiff was a national of the State in which the decision was rendered and had resided in the territory of that State for at least one year on the date of the writ instituting proceedings;
- (e) In the case of a dispute concerning inheritance of the movable property of a national of the State in which the decision was rendered or the inheritance of movable property in respect of which probate has been applied for in that State;
- (f) In the case of a dispute concerning real rights to immovable property situated in the State in which the decision was rendered;
- (g) When, in commercial matters, by express or tacit agreement between the plaintiff and the defendant, the contractual obligation which is the subject of the action originated, was executed or was to be executed in the territory of that State;
- (h) When, in the case of damages arising from non-contractual liability, the tort was committed in the territory of that State;

- (i) When the defendant entered a defence on the merits without disputing the jurisdiction of the original court;
- (j) In all other cases in which the jurisdiction of the court is recognized under the rules on international legal jurisdiction sanctioned by the legislation of the State in which the decision is invoked.

2. The provisions of this article shall not apply to decisions concerning disputes in respect of which the law of the requested State recognizes its own courts or those of a third State as having sole competence by reason of their subject-matter.

Article 17. This Part shall not apply to:

- (a) Decisions relating to bankruptcy, composition or similar proceedings, including supplementary proceedings relating to the validity of documents vis-à-vis creditors;
- (b) Decisions rendered in social security matters;
- (c) Decisions rendered in the matter of nuclear damage.

Article 18. 1. None of the decisions referred to in article 15 which is enforceable in one of the two States may be enforced by the authorities of the other State or be the subject of a formal procedure initiated by those authorities, such as the making of entries or corrections in the civil registers, until it has been declared enforceable in that State.

2. However, decisions relating to personal status and legal capacity rendered by the courts of one of the High Contracting Parties may be the subject of appropriate references or entries in the civil registers of the other Party, provided that such decisions do not appear to contravene the rules laid down by this Convention.

Article 19. 1. Execution shall be granted by the competent judicial authority in accordance with the law of the State in which it is requested.

2. The procedure for the grant of execution shall be governed by the legislation of the requested State.

Article 20. 1. The competent court shall confine itself to establishing whether the decision for which a grant of execution is requested satisfies the requirements for recognition laid down in the preceding articles. It shall proceed to such a review automatically and shall record the outcome in its decision.

2. In granting execution, the competent court shall, if necessary, order the requisite measures to ensure that the decision of the other State is publicized in the same way as if it had been rendered in the State in which it is declared enforceable.

3. Execution may be granted for only part of the decision of the other State.

Article 21. 1. The decision granting execution shall be binding on all the parties concerned and throughout the territory of the requested State.

2. It shall confer on the decision which has been rendered enforceable, as from the date on which the grant of execution is obtained, the power to produce, in so far as enforcement measures are concerned, the same effects as if it had been rendered by the court which has granted execution on the date on which execution was granted.

Article 22. The party invoking recognition or requesting execution of a judicial decision shall produce:

- (a) a copy of the decision satisfying the requirements laid down in the legislation of the State of origin for authentication;
- (b) the original certificate of service of the decision or any equivalent original document in lieu;
- (c) a document of the office of the clerk of the court stating that there is no objection to or appeal against the decision;
- (d) a certified copy of the writ instituting proceedings addressed to the defendant, when the latter did not appear;
- (e) a translation of all the above-mentioned documents, certified in accordance with the rules laid down by the legislation of the requested State.

PART III

MISCELLANEOUS PROVISIONS

Article 23. The time limits for appearance and appeal shall be not less than three months for nationals of either State who are not resident in the territory of the State in which the court in question is situated.

Article 24. 1. With a view to being legally represented or defended in civil or commercial matters, French nationals in Tunisia and Tunisian nationals in France may, if they deem it necessary, engage an *avocat* of their own nationality.

2. Each such *avocat* shall be approved by the presiding judge of the court in question and shall be assisted by an *avocat* member of the bar of the host country.

Article 25. The High Contracting Parties shall communicate to each other, on request, all information on legislation in force in their territory or on judicial precedents on matters covered by this Convention, and any other useful legal information.

PART IV

FINAL PROVISIONS

Article 26. This Convention shall apply throughout the territory of each of the High Contracting Parties.

Article 27. This Convention shall be ratified. It shall enter into force on the first day of the second month following the exchange of instruments of ratification, which shall take place at Tunis as soon as possible.

Article 28. 1. This Convention is concluded for an indefinite period.

2. It may be denounced at any time by either of the High Contracting Parties, and such denunciation shall take effect six months after the date on which the notice of denunciation is received by the other State.

IN WITNESS WHEREOF the plenipotentiaries have signed this Convention and have affixed their seals thereto.

DONE at Paris, on 28 June 1972, in two copies in the French and Arabic languages, both texts being equally authentic.

For the President of the French Republic:

[Signed]

MAURICE SCHUMANN

For the President of the Republic of Tunisia:

[Signed]

MOHAMED MASMOUDI

ADDITIONAL PROTOCOL

At the time of signature of the Convention between the French Republic and the Republic of Tunisia concerning reciprocal legal assistance in civil and commercial matters and the recognition and execution of judicial decisions, the undersigned plenipotentiaries, in exercise of their full powers, found in good and due form, further agreed on the following provisions, to be regarded as integral parts of that Convention:

1. The provisions of Part II of this Convention shall apply only when the entry into force of this Convention predates the facts or legal documents on which the decision is based.

However, in the case of actions relating either to traffic accidents or to personal status or legal capacity or personal and pecuniary rights and obligations deriving from family relationships, the provisions of this Convention shall apply even to decisions rendered prior to the entry into force of this Convention.

2. It shall be understood that the competence of the judicial authority of the State in which the decision was rendered shall not be deemed to have been established if it was based solely on a clause assigning jurisdiction.

3. Experts of the High Contracting Parties may meet by agreement, alternately in France and Tunisia, in order to consider problems arising from the implementation of the Convention and, if necessary, to make any appropriate suggestions to their respective Governments with a view to amending or supplementing its provisions.

DONE in Paris, on 28 June 1972.

For the President of the French Republic:

[Signed]

MAURICE SCHUMANN

For the President of the Republic of Tunisia:

[Signed]

MOHAMED MASMOUDI