

No. 20941

**AUSTRIA
and
TUNISIA**

Convention on reciprocal legal assistance in civil and commercial matters (with additional protocol). Signed at Vienna on 23 June 1977

Authentic text: French.

Registered by Austria on 8 March 1982.

**AUTRICHE
et
TUNISIE**

Convention relative à l'entraide judiciaire en matière civile et commerciale (avec protocole additionnel). Signée à Vienne le 23 juin 1977

Texte authentique : français.

Enregistrée par l'Autriche le 8 mars 1982.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF TUNISIA ON RECIPROCAL LEGAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS

The Federal President of the Republic of Austria and the President of the Republic of Tunisia, desiring to regulate mutual relations between the two States in civil and commercial matters and to ensure, *inter alia*, the execution of letters rogatory and of the service of documents, have agreed to conclude a Convention to that end and have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Mr. Willibald P. Pahr

The President of the Republic of Tunisia: Mr. Brahim Turki

who having exchanged their full powers, found in good and due form, have agreed on the following provisions:

LEGAL PROTECTION

Article 1. 1. In civil and commercial matters, the nationals of each Contracting State shall, in the territory of the other, have free and unimpeded access to the courts for the prosecution and defence of their rights.

2. The preceding paragraph shall apply to bodies corporate and commercial enterprises established under the law of one of the Contracting States and have their headquarters or principal establishment in the territory of either State.

PROVISIONS COMMON TO THE SERVICE OF DOCUMENTS
AND LETTERS ROGATORY

Article 2. The Contracting States undertake to provide each other, upon request and in accordance with the provisions of this Convention, legal assistance in civil and commercial matters in both adversary and non-adversary proceedings.

Article 3. Applications for the service of documents, letters rogatory, and documents drawn up in execution of these applications and letters shall be transmitted between the Ministries of Justice of the Contracting States. Either Contracting State, however, may transmit them through the diplomatic channel.

Article 4. If the authority applied to is not competent in the matter, it shall transmit the application for the service of documents or the letter rogatory to the competent authority. It shall so inform the applicant authority in the manner prescribed in article 3.

Article 5. 1. Execution of the service of documents or of letters rogatory may be refused only if the State applied to deems that such execution is likely to be prejudicial to its sovereignty, security or public order.

¹ Came into force on 17 August 1980, i.e., 60 days after the date of the exchange of the instruments of ratification, which took place at Tunis on 18 June 1980, in accordance with article 21 (1) and (2).

2. When legal assistance is refused, either completely or in part, or when, for other reasons, it cannot be executed, the applicant authority shall be so informed, and the grounds therefor specified, in the manner prescribed in article 3.

SERVICE OF DOCUMENTS

Article 6. Applications for the service of judicial or extra-judicial documents must specify the authority which issued the document, the names and status of the parties, the address of the addressee and the nature of the document.

Article 7. 1. If the document to be served is either drawn up in the language of the State applied to or accompanied by a translation into that language, service shall be effected in accordance with the legal provisions of the State applied to for execution of the type of service in question.

2. If the document to be served is neither drawn up in the language of the State applied to nor accompanied by a translation into that language, the authority applied to may confine itself to effecting service by delivering the document to the addressee, provided that he is willing to accept it.

3. At the request of the applicant authority, service shall be effected in accordance with procedures other than those prescribed by the law of the State applied to, provided that they do not conflict with the requirements of the said law.

4. The accuracy of the translation referred to in paragraph 1 must be certified by either a diplomatic or a consular agent of the applicant State or by a sworn translator of one of the Contracting States.

Article 8. Proof of service shall take the form of a receipt properly dated and signed by the addressee or by another person to whom the document has been delivered—where delivery to the addressee in person has not been required—and by the server. It may also take the form of a certificate from the authority applied to attesting to the fact, manner and date of service.

Article 9. The applicant State shall not be required to reimburse any costs incurred in executing applications for the service of documents.

Article 10. 1. Either Contracting State may serve judicial or extra-judicial documents on its own nationals residing in the territory of the other Contracting State through its diplomatic or consular agents, who, however, may not apply measures of compulsion for this purpose.

2. For the application of the preceding paragraph, the nationality of the addressee on whom the document is to be served shall be determined in accordance with the law of the Contracting State in the territory of which service is to be effected.

LETTERS ROGATORY

Article 11. Letters rogatory must specify the authority which issued them and the names and status of the parties. Such letters must also clearly indicate the judicial or other legal proceedings which are to be instituted.

Article 12. Letters rogatory and all attached documents must be accompanied by translations into the language of the State applied to. Such translations must satisfy the conditions laid down in article 7 (4).

Article 13. 1. Letters rogatory shall be executed in accordance with the legal provisions of the State applied to governing judicial or other legal proceedings of the type in question.

2. At the request of the applicant authority, letters rogatory may be executed in accordance with procedures other than those prescribed by the law of the State applied to, provided that they do not conflict with the requirements of the said law.

3. The authority applied to shall be required to proceed with the execution of the letters rogatory as soon as possible.

4. The authority which issued the letters rogatory shall upon request be informed in good time and in the manner prescribed in article 3, of the place and date of execution of the letters rogatory, so that any parties concerned may be present or represented when the said execution takes place.

Article 14. The applicant State shall not be required to reimburse costs for the execution of letters rogatory, apart from any fees which may have been paid to experts.

Article 15. 1. The diplomatic or consular agents of either Contracting State may execute letters rogatory issued by the authorities of their State which relate to the hearing of nationals of their State residing in the territory of the other Contracting State; they may not apply measures of compulsion for this purpose.

2. For the application of the preceding paragraph, the nationality of the persons in respect of whom the hearing is requested shall be determined in accordance with the law of the Contracting State in whose territory this hearing is to be conducted.

LEGAL AID

Article 16. Nationals of one of the Contracting States appearing before the courts of the other Contracting State shall be entitled to legal aid under the same conditions as nationals of that other State.

Article 17. 1. The certificate of indigence required for authorization of legal aid shall be issued by the competent authority of the Contracting State in which the applicant has his habitual residence.

2. If the applicant does not have his habitual residence in the territory of either Contracting State, he shall be entitled to present a certificate of indigence issued either by the competent authority of his habitual residence or by the diplomatic or consular authority of the State of which he is a national.

Article 18. Application for authorization of legal aid before a court of the other Contracting State may be made through a diplomatic or a consular authority of the Contracting State of which the applicant is a national.

Article 19. 1. The authorities of the Contracting States referred to in article 17 may request the competent authorities of the other Contracting State to provide any information concerning the property and income of the applicant.

2. The authority which is to rule on the authorization of legal aid may verify the particulars provided to it and request additional information. The competent authorities of the Contracting States shall provide such information to one another upon request.

FINAL PROVISIONS

Article 20. This Convention shall not affect any provisions of other conventions or agreements to which the two Contracting States are parties and which govern the questions referred to herein.

Article 21. 1. This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Tunis.

2. The Convention shall enter into force sixty days after the exchange of the instruments of ratification.

3. Either Contracting State may denounce this Convention by giving written notice to that effect to the other Contracting State. The denunciation shall take effect six months after such notice is given.

IN WITNESS WHEREOF, the plenipotentiaries have signed this Convention.

DONE in duplicate, at Vienna on 23 June 1977, in the French language, this being the only authentic text. Translations into the German and Arabic languages shall be attached hereto.

For the Federal President of the Republic of Austria:
WILLIBALD P. PAHR

For the President of the Republic of Tunisia:
BRAHIM TURKI

ADDITIONAL PROTOCOL

At the time of signature of the Convention between the Republic of Austria and the Republic of Tunisia on reciprocal legal assistance in civil and commercial matters, the undersigned plenipotentiaries have further agreed on the following provisions, to be regarded as integral parts of the Convention:

1. Correspondence between the Ministries of Justice of the two Contracting States shall take place in the French language.
 2. The translations provided for in article 12 may be translations into the French language.
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