

No. 22523

**HUNGARY
and
IRAQ**

Treaty on legal assistance. Signed at Budapest on 4 March 1977

Authentic texts: Hungarian and Arabic.

Registered by Hungary on 19 December 1983.

**HONGRIE
et
IRAQ**

**Traité relatif à l'entraide judiciaire. Signé à Budapest
le 4 mars 1977**

Textes authentiques : hongrois et arabe.

Enregistré par la Hongrie le 19 décembre 1983.

[TRANSLATION — TRADUCTION]

TREATY¹ ON LEGAL ASSISTANCE BETWEEN THE HUNGARIAN
PEOPLE'S REPUBLIC AND THE REPUBLIC OF IRAQ

The Hungarian People's Republic and the Republic of Iraq,

Desiring to strengthen the friendship between their two countries and to regulate their co-operation in the legal sphere,

Have decided to conclude this Treaty and for that purpose have appointed as their plenipotentiaries:

The Presidential Council of the Hungarian People's Republic: Dr. Mihály Korom, Minister of Justice,

The President of the Republic of Iraq: Dr. Munthir Ibrahim, Minister of Justice,
who, having exchanged their full powers, found in good and due form, have agreed as follows;

PART I. LEGAL PROTECTION

Article 1. Citizens of either Contracting Party shall enjoy in the territory of the other Contracting Party the same legal protection of their personal and property rights as citizens of the other Party. They shall have access to all the courts of the other Party. That Party shall extend all possible facilities to them in accordance with the character of the co-operation between the two countries under the provisions of this Treaty. They shall be exempt from legal costs and from the deposit of security (*cautio judicatum solvi*) in accordance with the legislation in force. This provision shall also apply to bodies corporate.

PART II. LEGAL ASSISTANCE

Chapter 1. EXEMPTION FROM COSTS

Article 2. 1. Where a petition is filed for exemption from costs, the competent authorities of the Contracting Party in whose territory the petitioner resides shall issue a certificate relating to his material status.

2. If the petitioner does not reside in the territory of either Contracting Party, a certificate issued by the diplomatic or consular representative of the Contracting Party of which he is a citizen shall suffice.

3. A certified translation in the official language of the Contracting Party to whose competent authority the petition for exemption from costs is addressed or a certified translation in English shall be attached to the certificate.

Chapter 2. SERVICE OF DOCUMENTS

Article 3. The competent authorities of the Contracting Parties shall extend legal assistance to each other in civil, commercial and family cases, subject to the conditions

¹ Came into force on 23 November 1977, i.e., 30 days after the exchange of the instruments of ratification, which took place at Baghdad on 24 October 1977, in accordance with article 49.

laid down in this Treaty. Such legal assistance shall include the service of legal documents and the execution of judicial applications relating to specific acts required in connection with judicial proceedings, such as the interrogation of witnesses, litigants and experts.

Article 4. The competent authorities of the Contracting Parties shall communicate with each other through the diplomatic channel in connection with legal assistance.

Article 5. 1. The execution of applications for the service of documents shall be effected in accordance with the law of the Contracting Party applied to.

2. The court requested to execute the application may also, at the request of the applicant court, proceed in the case in the manner and according to the formalities requested in the application if that does not conflict with the law of the Contracting Party applied to.

Article 6. 1. All documents transmitted in connection with legal assistance shall be accompanied by a certified translation in the language of the Contracting Party applied to or in English.

2. All documents to be served in connection with legal assistance shall bear the seal of the competent court and be certified by the Ministry of Justice.

Article 7. Each Contracting Party shall assume the costs incurred in its territory in connection with legal assistance.

Article 8. Legal assistance may be denied if its provision is prejudicial to the sovereignty or security of the Contracting Party applied to, conflicts with its fundamental legal principles or is contrary to the interests of public order in its territory.

Article 9. 1. An application for service of a document shall contain the title of the applicant authority, the addressee's full name, citizenship, occupation and address, the name and address of his legal representative and other particulars necessary for execution of the application.

2. Service shall be confirmed by a receipt bearing the date of service, the signatures of the addressee and the server and the seal of the court or by an official certificate of the court indicating the manner and date of service.

3. If the court applied to is unable to execute the application for service of the document, it shall so notify the applicant court, indicating the reasons which prevented execution of the application.

4. If execution of the application does not come within the competence of the court applied to, it shall transmit the application to the competent court.

Article 10. Each Contracting Party shall have the right to serve documents on its own citizens in the territory of the other Contracting Party through its diplomatic or consular representatives.

Chapter 3. PERFORMANCE OF SPECIFIC ACTS IN CONNECTION WITH JUDICIAL PROCEEDINGS

Article 11. The service of documents and the execution of applications for legal assistance under this Treaty shall have the same legal effect as if the documents had been served or the applications executed in the territory of the applicant Contracting Party.

Article 12. 1. In executing an application for the performance of specific acts required in connection with judicial proceedings, the authority applied to shall follow the law of its own State. At the request of the applicant authority, the application may, however, be executed in another manner if that does not conflict with the law of the Contracting Party applied to.

2. If the authority applied to is not competent to execute the application, it shall transmit it to the competent authority.

3. The applicant authority shall, at its request, be notified of the place and time of execution of the application in order to enable the party concerned to be present in person or to authorize someone to represent him; this shall not apply in cases in which the application is executed as a matter of urgency.

4. The authority applied to shall return the documents to the applicant authority. If it has not been possible to provide the legal assistance, the authority applied to shall, in returning the documents, indicate the circumstances which prevented execution of the application.

Article 13. 1. No person, irrespective of citizenship, who appears as a witness or expert before a court of the applicant Contracting Party on the basis of a summons served upon him by a court of the Contracting Party applied to may be prosecuted or arrested for a punishable offence committed before he entered the territory of the applicant Contracting Party or be punished for such an offence in execution of a past sentence pronounced by a court in the territory of the applicant Contracting Party.

2. A witness or expert shall forfeit the protection provided for in paragraph 1 of this article if he fails to quit the territory of the applicant Contracting Party within 15 days after being informed by the court that his presence is no longer necessary even though he had the opportunity to quit that territory.

3. A person who is held in custody in the territory of the Contracting Party applied to and who is summoned by a court of the other Contracting Party to appear as a witness or expert may be transferred temporarily for that purpose, if other circumstances do not preclude the transfer, on condition that he is returned as soon as his presence is no longer necessary. Such a person shall enjoy the protection provided for in paragraphs 1 and 2 of this article.

Chapter 4. SUCCESSION

Article 14. In all matters of succession—including litigation concerning inheritances—which arise in the territory of either Contracting Party, the diplomatic or consular representative of the other Contracting Party shall have the right to represent citizens of his own State before courts and other authorities if such citizens are not present and have not appointed other representatives; no special power of attorney shall be required in such cases.

Article 15. 1. If a citizen of one Contracting Party dies in the territory of the other Contracting Party, the competent authority shall immediately notify the diplomatic or consular mission of the first-mentioned Contracting Party of such death, communicating it to whatever information is available concerning possible heirs, their domicile or residence, the size and value of the estate and the existence of a will. The competent authority shall give similar notice if it has information to the effect that the decedent has left property in the territory of a third State.

2. If the competent authority of one Contracting Party learns that a citizen of the other Contracting Party has an interest as an heir in a matter of succession with which it is dealing, it shall so notify the diplomatic or consular mission of the latter Contracting Party.

3. If the diplomatic or consular mission of one Contracting Party learns first of the death of a citizen of its country, it shall notify the competent authority of the other Contracting Party in order that steps may be taken to protect the estate.

Article 16. If a citizen of either Contracting Party not domiciled in the territory of the other Contracting Party dies during a temporary stay in the said territory, his personal

effects together with an inventory thereof shall be delivered without any formal proceedings to the diplomatic or consular mission of the Contracting Party of which he was a citizen.

Chapter 5. LEGAL ASSISTANCE IN CRIMINAL CASES; EXTRADITION OF OFFENDERS

Article 17. 1. The Contracting Parties undertake to provide legal assistance to each other in criminal cases, having due regard to the conditions laid down in this Treaty.

2. Legal assistance in criminal cases shall include service of documents, transmittal of physical evidence, and execution of applications for specific acts in connection with judicial proceedings, including the interrogation of accused persons, the hearing of witnesses or experts, searches of premises or persons, investigations, seizures and detention.

Article 18. 1. The provisions of articles 3 to 13 of this Treaty shall also apply to legal assistance in criminal cases.

2. Legal assistance shall not be provided if it is requested in connection with an offence which is not extraditable under this Treaty.

Article 19. Each Contracting Party undertakes to extradite to the other on request, in accordance with the provisions of this Treaty, persons in its territory whose presence is required for the purpose of criminal prosecution or for the execution of a sentence.

Article 20. 1. Extradition shall take place in respect of acts which, under the law of both Contracting Parties, constitute offences and are punishable with deprivation of liberty for a term of not less than two years or with a heavier penalty. Extradition with a view to the execution of a sentence shall take place on condition that the sentence has become final and that the person claimed has been sentenced to deprivation of liberty for a term of not less than six months or to a heavier penalty.

2. Where more than one offence has been committed, the requisition for extradition shall be deemed to be justified if at least one of the said offences is an extraditable offence.

Article 21. 1. Each Contracting Party undertakes to prosecute under its own law, at the request of the other Contracting Party, any of its citizens who are suspected of having committed in the territory of the other Contracting Party an offence which is extraditable under article 20 of this Treaty.

2. The request shall be accompanied by a certificate containing particulars of the offence and all available evidence.

3. The Contracting Party applied to shall inform the applicant Contracting Party of the results of the prosecution and, if a sentence was pronounced, shall transmit a copy thereof.

Article 22. Each Contracting Party shall notify the other Contracting Party of final sentences pronounced by its courts in respect of citizens of the said other Contracting Party; specifically, it shall provide particulars concerning the convicted person, the court by which the sentence was pronounced, the date of sentencing, the nature of the offence and the penalty imposed by the court.

Article 23. Extradition shall not take place:

- (1) If the person claimed is a citizen of the Contracting Party applied to;
- (2) If the offence was committed in the territory of the Contracting Party applied to and application has not been made for the institution of prosecution under article 21, paragraph 1, of this Treaty;
- (3) If, under the law of the Contracting Party applied to, exemption from prosecution or punishment has been acquired by lapse of time or on other legal grounds;

- (4) If extradition is not permitted under the law of the Contracting Party applied to or if it conflicts with public order in its territory;
- (5) If a final sentence in respect of the same offence has been pronounced in the territory of the Contracting Party applied to against the person claimed or if the prosecution has been definitively terminated.

Article 24. If extradition has not taken place, the Contracting Party applied to shall so notify the other Contracting Party, informing it of the grounds for refusal of extradition.

Article 25. 1. If the person claimed is being prosecuted for another offence in the territory of the Contracting Party applied to, extradition may take place upon the termination of the proceedings or the execution or remission of the sentence.

2. If postponement of extradition would result in the acquisition of exemption from prosecution by reason of lapse of time or would prejudice the prosecution of the person claimed, the applicant Party may request temporary extradition for the purpose of criminal prosecution.

3. The applicant Party shall return the temporarily extradited person immediately upon the termination of the preliminary investigation or judicial proceedings without executing the sentence, and in any case no later than three months from the date of extradition.

Article 26. Communication in matters relating to criminal prosecution or the extradition of offenders shall take place through the diplomatic channel between the Ministry of Justice or the office of the General Procurator of the Hungarian People's Republic and the Ministry of Justice of the Republic of Iraq.

Article 27. 1. A requisition for extradition with a view to prosecution shall be accompanied by a warrant of arrest, particulars concerning the circumstances of the offence, a list of the evidence, the text of the statutes on which the requisition is based and, if the offence resulted in material damage, particulars concerning the extent of the damage.

2. A requisition for extradition with a view to execution of a sentence shall be accompanied by a certified copy of the final sentence and the text of the statute on the basis of which the sentence was pronounced; if the convicted person has already served a part of his sentence, the relevant particulars shall be provided.

3. A requisition for extradition shall include a personal description of the person claimed, his photograph and particulars concerning his citizenship and domicile, in so far as such particulars cannot be found in the warrant of arrest or the sentence.

4. The documents referred to in paragraphs 1 to 3 of this article shall be sealed by the competent authority and authenticated by the Ministry of Justice; the documents in question shall be accompanied by a translation in the language of the Contracting Party applied to or in English.

Article 28. 1. Where extradition takes place, the Contracting Party applied to shall deliver to the applicant Contracting Party any articles acquired through the commission of an offence and any articles which may be used as evidence in the trial. Such articles shall be delivered even in cases in which the person claimed cannot be extradited by reason of his death or flight or for other reasons.

2. The Contracting Party applied to may temporarily retain the articles referred to in paragraph 1 above if they are required for criminal proceedings being conducted in its territory in another case.

3. The rights of third parties to such articles shall remain unaffected, and the articles shall, upon the conclusion of the trial, be returned to the extraditing Contracting Party for transmittal to the persons entitled to them if the identity of such persons is established.

Article 29. If the requisition for extradition does not contain the information required for its execution, the Contracting Party applied to may request such information and set a time-limit for transmittal of the supplementary information. The time-limit may be extended on request.

Article 30. After receipt of a requisition for extradition, the Contracting Party applied to shall, save in cases in which extradition is not permitted, take immediate steps under its law to find the person claimed and, if necessary, to arrest him.

Article 31. 1. In cases admitting of no delay, a person against whom criminal proceedings have been initiated may be arrested even before receipt of the requisition for extradition if the competent authority makes application for such arrest, specifying that there exists a warrant of arrest or a final sentence or stating at the same time that the requisition for extradition is being transmitted. The application for arrest may be made by telegraph or other similar means. The applicant Contracting Party shall submit at the earliest possible time all documents required for extradition to which reference is made in article 27 of this Treaty.

2. The competent authorities of either Contracting Party may arrest a person present in their territory even in the absence of the application provided for in paragraph 1 of this article if there is sufficient reason to believe that he has committed an offence subject to extradition under article 20 of this Treaty in the territory of the other Contracting Party.

3. The other Contracting Party shall be notified forthwith of an arrest made under paragraphs 1 and 2 of this article or of the reasons why an application made under paragraph 1 of this article has been denied.

Article 32. 1. The Contracting Party applied to shall terminate extradition proceedings and release the arrested person if the supplementary information requested is not supplied by the applicant Contracting Party within the time-limit set under article 29 of this Treaty.

2. A person arrested in accordance with the provisions of article 31 of this Treaty shall be released if the requisition is not received within two months from the date on which the other Contracting Party received notice of his arrest.

Article 33. If requisitions for the extradition of the same person for a specific offence or a number of offences are received from more than one State, the Contracting Party applied to shall decide which of the requisitions shall be complied with, having regard to the citizenship of the person claimed and also to the place where the offence was committed and the gravity thereof.

Article 34. 1. An extradited person may not, without the consent of the Party which extradited him, be prosecuted or punished in the applicant State for an offence committed before his extradition or an offence other than the one for which he was extradited. An extradited person may not, without the consent of the Contracting Party which extradited him, be surrendered to a third State.

2. If the extradited person is afforded an opportunity to quit the territory of the State to which he was extradited but fails to avail himself of such opportunity within 30 days after the conclusion of the criminal proceedings or, in the event of his conviction, within 30 days after the completion or remission of the sentence, he may be prosecuted or punished for another offence. Such period of 30 days shall not be deemed to include any period of time during which the extradited person has been unable through no fault of his own to quit the territory of the Contracting Party to which he was extradited.

Article 35. The applicant Contracting Party shall inform the Contracting Party applied to of the results of the prosecution of persons extradited. If a sentence is pronounced in respect of such persons, a certified copy of the sentence shall be transmitted.

Article 36. 1. The Contracting Party granting extradition shall inform the applicant Contracting Party of the place and time of the extradition of the person claimed.

2. A person whose extradition has been granted shall be released if the applicant Contracting Party does not accept him within 20 days from the date set for his extradition.

Article 37. 1. Each Contracting Party shall authorize the conveyance in transit through its territory of any person extradited by a third State to the other Contracting Party. The Contracting Party applied to shall not be bound to authorize such conveyance in cases in which extradition is not justified under the provisions of this Treaty.

2. An application for authorization of conveyance in transit shall be made and examined in the same manner as a requisition for extradition.

Article 38. Each Contracting Party shall assume all costs incurred in its territory in connection with extradition and conveyance in transit.

Chapter 6. RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

Article 39. Each Contracting Party shall recognize and enforce in its territory, in accordance with the provisions of this Treaty, final and enforceable judgements and settlements in civil, commercial and family cases relating to property claims, and also judgements relating to damages in criminal cases, rendered in the territory of the other Contracting Party after the entry into force of this Treaty.

Article 40. The competent authority applied to for enforcement shall not examine a judgement as to the merits. Enforcement of the judgement may be refused:

- (1) If the court which rendered the judgement was not competent to hear the case under the law of the State in whose territory the judgement was rendered;
- (2) If the litigants or their legal representatives were not duly advised in order that they might be present;
- (3) If recognition and enforcement of the judgement is, in the opinion of the Contracting Party applied to, contrary to the interests of its public order;
- (4) If a judgement has been rendered by a court of the Contracting Party applied to in an action between the same litigants, in relation to the same claim and on the same grounds, and such judgement has become final, or if an action between the same litigants in relation to the same claim and on the same grounds was instituted in a court of the State applied to earlier than in the applicant State and is being tried in such court as the time when the application is examined.

Article 41. 1. An application for enforcement of a judgement shall be accompanied by:

- (1) The original judgement or a certified copy thereof, with confirmation that it is a final enforceable judgement, if that fact is not apparent from the judgement itself;
- (2) A certification showing that a losing party who did not attend the proceedings was summoned in accordance with the law at the appropriate time and that, in the event of his inability to participate, he was duly represented;
- (3) A certified translation, in the language of the Contracting Party applied to for recognition or enforcement of the judgement or in English, of the documents referred to in sub-paragraphs (1) and (2).

2. The documents referred to in paragraph 1 shall bear the seal of the court and be certified by the Ministry of Justice.

Article 42. Authorization of enforcement and the procedure therefor shall be determined by the law of the Contracting Party in whose territory enforcement is to be effected.

Article 43. The Minister of Justice of each Contracting Party shall determine, and inform the other Contracting Party, which authorities are competent to hear applications for authorization of the enforcement of judgements and which procedure is to be used for appeals against the decisions of such authorities.

PART III. FINAL PROVISIONS

Article 44. Documents duly drawn up or attested by a competent authority in the course of its proceedings in the territory of either Contracting Party shall be accepted in the territory of the other Contracting Party. Official documents of either Contracting Party shall have in the territory of the other Contracting Party the evidential value of official documents issued under the law of the latter Contracting Party.

Article 45. 1. Each Contracting Party shall annually transmit to the other Contracting Party, through the diplomatic channel and free of charge, birth, marriage and death certificates relating to citizens of the latter Contracting Party.

2. Each Contracting Party shall, upon request made through the diplomatic channel, transmit to the other Contracting Party for official use the certificates referred to in paragraph 1.

Article 46. The Ministries of Justice of the Contracting Party shall provide each other with information on legislation in force or formerly in force and on legal practice in their respective States and shall exchange delegations and experience in connection with legal matters. The Ministers of Justice shall make appropriate detailed arrangements for the maintenance of regular contacts.

Article 47. All questions arising in connection with the interpretation and application of this Treaty shall be settled by the Ministers of Justice of the Contracting Parties direct or by means of a protocol.

Article 48. This Treaty is subject to ratification by the competent authorities of the Contracting Parties in accordance with their constitutional provisions. The exchange of the instruments of ratification shall take place at Baghdad.

Article 49. This Treaty shall enter into force 30 days after the date of the exchange of the instruments of ratification and shall remain in force for a term of five years, which shall be automatically renewed until such time as one of the Contracting Parties gives notice in writing, at least six months before the expiry of the current term, that it wishes to revise or terminate the Treaty.

DONE at Budapest on 4 March 1977, in duplicate in the Hungarian and Arabic languages, both texts being equally authentic.

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

For the Presidential Council
of the Hungarian People's Republic:

[Dr. MIHÁLY KOROM]

Minister of Justice

For the President
of the Republic of Iraq:

[Dr. MUNTHIR IBRAHIM]

Minister of Justice