

No. 22335

**FRANCE
and
MOROCCO**

**Convention concerning personal and family status and
judicial co-operation. Signed at Rabat on 10 August
1981**

Authentic texts: French and Arabic.

Registered by France on 30 August 1983.

**FRANCE
et
MAROC**

**Convention relative au statut des personnes et de la famille,
et à la coopération judiciaire. Signée à Rabat le 10 août
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Textes authentiques : français et arabe.

Enregistrée par la France le 30 août 1983.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE KINGDOM OF MOROCCO CONCERNING PERSONAL AND FAMILY STATUS AND JUDICIAL CO-OPERATION

The President of the French Republic and
His Majesty the King of Morocco,

Noting the importance of personal and family relationships between nationals of the two States and the need to preserve for individuals the fundamental principles of their national identity,

Desiring, therefore, to establish common regulations governing the conflict of laws and of jurisdictions with respect to personal and family status,

Desiring to strengthen relations in the field of judicial co-operation between the two States, in order better to ensure the protection of children and persons entitled to maintenance,

Have decided to conclude a Convention.

To that end, they have appointed as their plenipotentiaries:

The President of the French Republic:

Mr. Claude Cheysson, Minister for Foreign Affairs;

His Majesty the King of Morocco:

Mr. M'Hammed Boucetta, Minister of State for Foreign Affairs and Co-operation,

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

GENERAL PROVISIONS

Article 1. The status and capacity of an individual shall be governed by the legislation of that of the two States of which he is a national.

Article 2. The domicile of an individual shall be the place of his effective habitual residence.

Article 3. The legislation of one of the two States shall be understood to mean the domestic legislation of that State, as distinct from such international provisions governing the conflict of laws as may be in force in that State.

Article 4. The legislation of one of the two States, as referred to in this Convention, may not be dismissed by the courts of the other State unless it is manifestly incompatible with public policy.

CHAPTER I. MARRIAGE

Article 5. The basic conditions for marriage, such as legal age and consent, as well as the impediments thereto, particularly those arising as a result of blood

¹ Came into force on 19 May 1983, the date of the exchange of the instruments of ratification, which took place at Paris, in accordance with article 29.

relationship or relationship by marriage, shall be governed for each of the future spouses by the legislation of that of the two States of which he or she is a national.

Article 6. The formal requirements for marriage shall be governed by the legislation of that of the two States whose authority performs the marriage.

Either State may decide that a marriage in the other State between two of its nationals shall be performed by its consular officials.

A marriage on French territory between a national of Morocco and a national of France must be performed by a registry officer who is recognized as being competent under French law. In order to validate the union under Moroccan law, the competent Moroccan consular officials shall proceed to register the marriage once they have verified that it was actually performed.

A marriage on Moroccan territory between a national of Morocco and a national of France may not be performed by the *adouls* unless the French national presents the certificate of marriage issued by the French consular officials. The *adouls* shall perform the marriage in accordance with the procedures applicable to the personal status of the future spouse who is a national of Morocco. Where the French national has not appointed anyone to act as *wali*, the place of the *wali* shall be taken by the magistrate who confirms the marriage. The magistrate shall in any case immediately inform the competent French consular officials of the marriage.

Article 7. The personal effects of a marriage shall be governed by the legislation of that of the two States of which the spouses are nationals.

If one of the spouses is a national of one of the two States and the other spouse is a national of the other State, the personal effects of the marriage shall be governed by the legislation of that of the two States in whose territory the spouses have their joint domicile or had their last joint domicile.

Maintenance obligations between spouses shall be governed in accordance with the provisions of chapter III of this Convention.

Article 8. The courts of that of the two States in whose territory the spouses have their joint domicile or had their last joint domicile may be considered as competent under the terms of article 16, paragraph (a), of the Convention concerning reciprocal legal assistance, grant of execution of judgements and extradition of 5 October 1957,¹ to hear suits relating to the personal effects of a marriage.

However, where the spouses are both nationals of one of the two States, the courts of that State may be equally competent, regardless of the domicile of the spouses at the time when the legal action is brought.

Where a legal action has been brought before a court of one of the two States and a new action between the parties for the same purpose is brought before a court of the other State, the latter court shall defer its pronouncement of judgement.

CHAPTER II. DISSOLUTION OF MARRIAGE

Article 9. A marriage shall be dissolved in accordance with the legislation of that of the two States of which the spouses are both nationals on the date when the petition for dissolution is presented.

¹ United Nations, *Treaty Series*, vol. 746, p. 244.

Where, on the date when the petition is presented, one of the spouses is a national of one of the two States and the other spouse is a national of the other State, the marriage shall be dissolved in accordance with the legislation of the State on whose territory the spouses have their joint domicile or had their last joint domicile.

Article 10. The rules governing the conflict of laws set forth in the preceding article shall be applicable to the personal effects of a dissolution of marriage.

Effects relating to the custody of children and to the maintenance payments which are due to such children shall be governed by the provisions of chapter III of this Convention.

Article 11. Under the terms of article 16, paragraph (a), of the Convention concerning reciprocal legal assistance, grant of execution of judgements and extradition of 5 October 1957, a marriage may be dissolved by the courts of that of the two States in whose territory the spouses have their joint domicile or had their last joint domicile.

However, where both spouses are nationals of one of the two States, the courts of that State may be equally competent, regardless of the domicile of the spouses at the time when the legal action is brought.

Where a legal action has been brought before a court of one of the two States and a new action between the same parties for the same purpose is brought before a court of the other State, the latter court shall defer its pronouncement of judgement.

Article 12. The rules laid down in articles 9, 10 and 11 of this Convention shall be applicable to judicial separation where such separation is provided for under the relevant legislation of one of the two States.

Article 13. Records attesting to the dissolution of the conjugal bonds between spouses of Moroccan nationality, and confirmed by a judge in Morocco in the manner provided for under their national legislation, shall have the same validity in France as divorce judgements rendered abroad.

Once they have become final, records attesting to the dissolution of the conjugal bonds between a husband of Moroccan nationality and a wife of French nationality, in accordance with Moroccan legislation, and drawn up and confirmed by a judge in Morocco shall, when cited by the wife, have the same validity in France as divorce judgements.

Article 14. By way of exception to article 17 of the Convention concerning reciprocal legal assistance, grant of execution of judgements and extradition of 5 October 1957, decisions on personal status which have the force of *res judicata* may be published or entered in the civil registers without grant of execution of judgement.

CHAPTER III. CHILD CUSTODY, VISITATION RIGHTS AND MAINTENANCE OBLIGATIONS

Section 1. *General provisions*

Article 15. The authorities of the two States with jurisdiction in the fields of child custody, visitation rights and maintenance obligations shall provide each

other with reciprocal legal assistance and promote co-operation between themselves in those fields.

Article 16. The Ministries of Justice of the two States shall be designated as central authorities with responsibility for meeting the obligations imposed on them by this Convention. The said central authorities shall communicate directly with each other for that purpose and shall inform their competent authorities if the need arises. The intervention of the central authorities shall be free of charge.

A Mixed Advisory Commission, composed of representatives of the Ministries of Foreign Affairs and Justice, shall be established and shall meet periodically at the request of either State in order to facilitate the settlement of the most difficult problems which are referred to the central authorities.

Article 17. The central authorities may, unless to do so would be incompatible with policy, address requests for information or investigation to each other with respect to civil, commercial or administrative proceedings or cases relating to personal status which are being heard by their judicial authorities. They shall follow up the requests which they address to each other with regard to the provision, free of charge, of copies of public documents, and in particular copies of judicial decisions, records of civil status or records relating to personal status. They shall provide each other, on request, with information concerning the laws in force in the territories of their States, in order to facilitate the presentation of evidence to the judicial authorities, and concerning their judicial systems.

Assistance of the same nature may be rendered by means of information supplied by the consular authorities concerned.

Article 18. A party which under title II of the Convention concerning reciprocal legal assistance, grant of execution of judgements and extradition of 5 October 1957 invokes the authority of a judicial decision rendered in connection with a case of child custody, visitation rights or maintenance or which requests execution of such a decision shall produce a certificate of the clerk of the court, stating simply that the decision is enforceable in the State where it was rendered, notwithstanding the provisions of article 16, paragraph (c), and article 21, paragraph (c), of that Convention.

Section 2. *Child custody and visitation rights*

Article 19. The two States shall guarantee to each other under the supervision of their judicial authorities the free exercise in their territory of custody rights in respect of a minor child, on the sole condition that the interests of the child be respected, without any other restriction derived from their internal legislation, together with the free exercise of visitation rights. They shall guarantee to each other that the judicial decisions rendered by the other State in this field shall be properly executed.

Article 20. The central authorities shall assist each other in seeking and locating in their territory displaced children the right to custody of whom is contested or unrecognized. They shall comply with requests for information relating to the material and moral situation of such children.

The central authorities shall, directly or indirectly, take every measure to ensure the voluntary return of the children or to facilitate an amicable solution. In cases of urgency, they shall ensure that every provisional measure that seems effective is taken to protect the child from new dangers or the parties concerned

from further harm. They shall provide information of a general nature on the contents of their laws with respect to the application of these provisions and shall, if the need arises, draw up certificates regarding the nature of their legislative provisions on custody and visitation rights.

The central authorities shall, directly or indirectly, take every measure to facilitate the exercise of visitation rights. They shall co-operate with a view to organizing visitation and accommodation rights in the territory of the two States for the benefit of those parents who do not enjoy custody rights and to remove any legal obstacle to the exercise of such rights. They shall also co-operate to ensure respect for the conditions imposed by their respective authorities for the enjoyment and free exercise of those rights, as well as for the commitments entered into by the parties in that regard.

Judicial decisions relating to child custody and the exercise of visitation rights which are rendered in the territory of one of the two States may be declared applicable in the territory of the other State by the courts of that State, in accordance with the provisions of article 16, paragraphs (a), (b) and (d), and article 17 of the Convention of 5 October 1957. The central authorities shall refer such requests directly to their competent judicial authorities for the pronouncement of judgement.

Article 21. Failing voluntary return, the central authorities shall assist each other in facilitating the execution of judicial decisions relating to custody or visitation rights when they are enforceable in the requesting State.

Article 22. The central authorities shall at the earliest opportunity refer petitions to their competent judicial authorities, through the public prosecutor's office which deals with the civil courts, either for the enforcement in the requested State of decisions which are enforceable in the requesting State or for the pronouncement of a judgement on the return of a child.

The central authorities shall also refer to their judicial authorities petitions to determine or to protect the exercise of rights to visit and accommodate a child in one or the other State for the benefit of the parent who does not enjoy custody rights.

Article 23. The judicial authorities of the two States shall, once a case is referred to them, pronounce judgement as a matter of urgency. If these authorities have not pronounced judgement within six weeks of the date on which the case was referred to them, the central authority of the requested State shall inform the central authority of the requesting State of the extent to which the proceeding has progressed.

The central authorities shall ensure the rapid execution of such relevant letters rogatory as may be used to assemble all the necessary information.

Article 24. With regard to child custody, and pursuant to the provisions of articles 16 and 17 of the Convention of 5 October 1957, recognition or execution of a decision rendered in one of the two States may not be refused by the other State in the following cases:

- (1) When the court of the State which rendered the decision is that:
 - Of the joint effective residence of the parents; or
 - Of the residence of the parent with whom the child habitually resides;

- (2) When the court of the State which rendered the decision applied:
 - (a) If the parents are of the same nationality, the national legislation applicable to both of them;
 - (b) If the parents do not share the same nationality:
 - Either the legislation of their joint effective residence;
 - Or the legislation of the residence of the parent with whom the child habitually resides.

In its evaluation of the territorial jurisdiction of the court of the State which rendered the decision, the requested authority of the other State shall be bound by the statements of fact on which that court based its jurisdiction, except in the event of a decision by default.

Article 25. The judge of a State to which a child has been removed or in which he has been held shall, as a precautionary measure, order the immediate return of the child, unless the person who has removed or held the child proves:

- (1) That, at the time of the violation invoked, the person to whom custody had been awarded before the child was removed was not exercising the right of custody over the child effectively or in good faith; or
- (2) That to return the child would seriously endanger his health or safety, as a result of an exceptionally serious event which had occurred since custody was awarded.

In their evaluation of the circumstances referred to above, the judicial authorities shall take into consideration the information provided by the central authority of the State of the child's habitual residence, particularly with regard to his social condition and to the contents of the legislative provisions relating to custody rights in that State.

A decision on the child's return shall be without prejudice to the basis of the right of custody.

When the courts of the other State have before them an action to amend the award of custody rights in respect of a child who has been removed or held in violation of a custody decision rendered by a court of one of the two competent States under paragraph 1 of article 24 above and are presented with a petition for the child's return from the person enjoying custody rights, those courts shall pronounce judgement, as a matter of priority, on the petition for the child's return in accordance with the conditions of this article.

Section 3. *Maintenance obligations*

Article 26. The central authorities may, if the need arises, directly and in accordance with the procedure in cases of urgency, refer petitions to their competent judicial authorities for the enforcement of decisions rendered with respect to maintenance, without prejudice to the functions assigned to transmitting and receiving agencies under the New York Convention on the Recovery Abroad of Maintenance of 20 June 1956,¹ to which France and Morocco are parties.

Article 27. With regard to maintenance, and pursuant to the provisions of articles 16 and 17 of the Convention of 5 October 1957, recognition or execution

¹ United Nations, *Treaty Series*, vol. 268, p. 3.

of a decision rendered in one of the two States may not be refused by the other State in the following cases:

- (1) When the court of the State which rendered the decision declared itself competent because the habitual residence of the party entitled to maintenance was situated in its territory; or
- (2) When the court of the State which rendered the decision applied the legislation of the habitual residence of the party entitled to maintenance.

In its evaluation of the territorial jurisdiction of the court of the State which rendered the decision, the requested authority of the other State shall be bound by the statements of fact on which that court based its jurisdiction, except in the event of a decision by default.

CHAPTER IV. FINAL PROVISIONS

Article 28. This Convention shall be ratified.

Article 29. It shall enter into force on the day of the exchange of instruments of ratification, which shall take place at Paris at the earliest possible opportunity.

Article 30. Either of the High Contracting Parties may denounce this Convention at any time by providing the other Party, through the diplomatic channel, with written notice of such denunciation; denunciation shall then take effect one year after the date on which such notice is received.

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

DONE at Rabat, on 10 August 1981, in two copies in the French and Arabic languages, both texts being equally authentic.

For the President
of the French Republic:
[CLAUDE CHEYSSON]

For His Majesty the King
of Morocco:
[M'HAMMED BOUCETTA]