

No. 23994

**AUSTRIA
and
TUNISIA**

Convention on the recognition and enforcement of judgments and authentic acts in civil and commercial matters. Signed at Vienna on 23 June 1977

Authentic text: French.

Registered by Austria on 1 March 1986.

**AUTRICHE
et
TUNISIE**

Convention relative à la reconnaissance et l'exécution des décisions judiciaires et des actes authentiques en matière civile et commerciale. Signée à Vienne le 23 juin 1977

Texte authentique : français.

Enregistrée par l'Autriche le 1^{er} mars 1986.

[TRANSLATION — TRADUCTION]

CONVENTION^{1, 2} BETWEEN THE REPUBLIC OF AUSTRIA AND
THE REPUBLIC OF TUNISIA ON THE RECOGNITION AND
ENFORCEMENT OF JUDGEMENTS AND AUTHENTIC ACTS
IN CIVIL AND COMMERCIAL MATTERS

The Federal President of the Republic of Austria and the President of the Republic of Tunisia, desiring, in relations between the two States, to ensure the recognition and enforcement of judgements and authentic acts in civil and commercial matters, have agreed to conclude a Convention for this purpose 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:

Article 1. This Convention shall apply to judgements rendered in civil and commercial matters by the courts of the Contracting Parties, with the exception of judgements relating to bankruptcy, composition or other comparable procedures.

Article 2. For the purposes of this Convention:

1. The term “judgement” means any decision, however described, rendered in contentious or cordial proceedings, even if rendered by a criminal court.

2. The term “court of origin” means the court which rendered the judgement whose recognition or enforcement is sought.

3. The term “State of origin” means the State in whose territory the court of origin has its seat.

4. The term “court applied to” means, in Tunisia, the court applied to for an executory declaration and, in Austria, the court applied to for enforcement.

5. The term “State applied to” means the State in whose territory recognition or enforcement is sought.

Article 3. (1) Judgements rendered by a court of one of the Contracting Parties shall be recognized in the territory of the other, if the court of origin had jurisdiction within the meaning of articles 6 to 11 of this Convention and if, under the law of the State of origin, the judgement has become final.

(2) In the case of a judgement by default, the defendant must have been duly summoned to appear. In the case of an injunction to pay, an order for payment, a warrant on application or other judgement of a similar nature, the judgement must have been duly notified to the judgement debtor.

¹ The documentation pertaining to this Convention was submitted for registration on 4 March 1982. Due to an administrative error, its registration was only made on 1 March 1986.

² 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 20 (2).

Article 4. Recognition may be refused in the following cases:

1. If it is contrary to the public policy of the State applied to;
2. If the same claim, based on the same cause of action, has already formed the subject, as between the same parties, of a judgement on the merits, which has become final and which was rendered in the State applied to or was rendered in a third State and is recognized in the State applied to;
3. If, as between the same parties, the same claim, based on the same cause of action, is pending before a court of the State applied to and the action was brought in such court before it was brought in the court of origin;
4. If, in the case of a judgement by default, the party in default did not acquire knowledge of the proceedings in sufficient time to act upon it, or, in the case of an injunction to pay, an order for payment, a warrant on application or other judgement of a similar nature, the judgement debtor did not have sufficient time to apply for a stay of proceedings.

Article 5. (1) Recognition shall not be refused on the ground that the Court of origin applied a law other than that which would have been applicable under the rules of private international law of the State applied to, except with regard to appreciation of the status or capacity of nationals of the State applied to. Even in such cases, recognition shall not be refused if the application of the aforementioned rules would have led to the same result.

(2) Recognition may be refused if the rules concerning the representation of persons under disability who are nationals of the State applied to and prescribed by the law of that State have been disregarded.

Article 6. This Convention shall not affect the rules relating to the jurisdiction of the courts of the Contracting Parties. Nevertheless, under article 3, paragraph (1), recognition shall not be granted unless the court of origin had jurisdiction within the meaning of articles 7 to 11.

Article 7. (1) The courts of the State of origin shall have jurisdiction in matters relating to status and capacity if, on the date of the institution of proceedings, one of the persons whose status or capacity is at issue is a national of that State.

(2) The same shall apply if, on the aforementioned date, all the persons whose status or capacity is at issue are domiciled or habitually resident in the territory of the State of origin and are nationals of the State applied to.

Article 8. The courts of the State of origin shall have jurisdiction in cases where the subject matter of the proceedings is a right *in rem* in respect of immovable property situated in the territory of that State. Such jurisdiction is also extended to inheritance cases relating to such a right *in rem*.

Article 9. The courts of the State of origin shall have jurisdiction in matters relating to the inheritance of movable property if the deceased was a national of that State.

Article 10. In matters other than those mentioned in articles 7, 8 and 9, the courts of the State of origin shall have jurisdiction:

1. If, on the date of the institution of proceedings, the defendant is domiciled or habitually resident in the territory of that State or, in the case of a body

corporate or commercial company, its headquarters or principal establishment are located therein;

2. If the defendant has or had a commercial, industrial, or other establishment or branch establishment in the territory of that State and is served with a summons there in an action relating to the operation of such establishment or branch establishment;
3. If, in a commercial case, the contractual obligation which is the subject-matter of the proceedings has been or should be executed in the territory of that State;
4. If, in the case of a claim for damages based on extra-contractual liability, the tort was committed in the territory of that State;
5. If the subject-matter of the proceedings is an obligation relating to maintenance, when the two parties are nationals of that State or when they had their last joint residence there; in the latter case, the defendant must have retained that habitual residence until the date of institution of proceedings;
6. If, on the date of the institution of proceedings, the defendant owns property in the territory of that State and is neither domiciled nor habitually resident in the territory of the other State.

Article 11. In matters other than those mentioned in articles 7, 8 and 9, the court of origin shall also have jurisdiction:

1. If the defendant has expressly submitted to the jurisdiction of that court, either by a choice of domicile, or by any other stipulation attributing jurisdiction, provided that the law of the State applied to does not otherwise object by reason of the subject-matter of the action;
2. If the defendant has entered a defence on the merits without contesting the jurisdiction of the court of origin or stating that he submits to such jurisdiction only in respect of property situated in the State of origin;
3. If, in the case of a counter-claim, the court of origin had jurisdiction under article 10 or under this article in respect of the principal claim.

Article 12. Judgements delivered by the courts of one of the two States and recognition of which is sought in the other State shall not be the subject of any consideration other than that of the conditions provided for in the preceding articles. In no circumstances shall the merits of such judgements be considered.

(2) The court in which it is sought to obtain recognition shall be bound by the findings of fact which are contained in the judgement and provide the basis for the jurisdiction of the court of origin.

Article 13. The party seeking to obtain recognition must produce:

1. A complete and duly authenticated copy of the judgement;
2. (a) If the judgement was rendered in Austria, a statement by the court which rendered judgement in the first instance certifying that the judgement has become final;
- (b) If the judgement was rendered in Tunisia, either an express indication that the judgement was rendered in the last instance, or a certification issued by the clerk of the court of origin that the case has not been the subject of an appeal;

3. In the case of a judgement by default, a certified true copy of the summons or other documentary evidence that the defendant was duly summoned to appear;

4. In the case of an injunction to pay, an order for payment, a warrant on application or other judgement of a similar nature, documentary evidence that the judgement was duly notified to the judgement debtor.

Article 14. (1) The courts of either of the Contracting Parties shall, in accordance with the provisions of their national law, either refuse to proceed with the case or defer judgement if, as between the same parties, the same claim, based on the same cause of action, is already pending before a court of the other State and the proceedings may lead to a judgement which qualifies for recognition under this Convention.

(2) Nevertheless, in urgent cases, application may be made to the courts of either of the Contracting Parties for interim or conservatory measures (*mesures provisoires ou conservatoires*), irrespective of which court is dealing with the merits of the case.

Article 15. (1) Any judgement rendered by a Tunisian court shall be enforceable in Austria if it is enforceable in Tunisia and the conditions for its recognition are fulfilled.

(2) Any judgement rendered by an Austrian court shall be declared enforceable in Tunisia if it is enforceable in Austria and the conditions for its recognition are fulfilled.

Article 16. The party applying for the enforcement in Austria of a judgement rendered in Tunisia, or for the grant of an executory declaration in Tunisia in respect of a judgement rendered in Austria, must produce, in addition to the documents specified in article 13, documentary evidence that the judgement is enforceable in the territory of the State of origin.

Article 17. (1) Authentic acts drawn up and enforceable in Tunisia shall be enforceable in Austria. Authentic acts drawn up and enforceable in Austria shall be declared enforceable in Tunisia.

(2) In each of the two States, the court shall confine itself to verifying that the act is duly authenticated and that its enforcement is not contrary to the public policy of the State applied to.

(3) The provisions of this article shall also apply to settlements in civil and commercial law matters drawn up before a judge and settlements in matters relating to maintenance drawn up before the Austrian public authorities responsible for the guardianship of minors.

Article 18. (1) Documents to be produced under this Convention shall be exempt from legalization or from any other formality of a similar nature.

(2) Such documents must be accompanied by a translation certified correct either by a diplomatic or consular agent of the State of origin, or by a sworn translator of one of the two States.

Article 19. (1) This Convention shall not affect the provisions of other conventions or agreements to which the two Contracting States are parties and which govern the recognition and enforcement of judgements or authentic acts.

(2) This Convention shall apply only to judgements rendered and to authentic acts drawn up after the date of its entry into force.

Article 20. (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 60 days after the exchange of the instruments of ratification.

(3) Either of the Contracting Parties may denounce the Convention by giving notice in writing to the other Contracting Party. The denunciation shall take effect six months after the date of such notice.

IN WITNESS WHEREOF the plenipotentiaries have signed this Convention.

DONE in duplicate at Vienna this 23rd day of June 1977, in the French language, this being the only authentic text. Translations into the German and Arabic languages shall be appended to this text.

For the Federal President of the Republic of Austria:

WILLIBALD P. PAHR

For the President of the Republic of Tunisia:

BRAHIM TURKI
