

No. 26264

FRANCE
and
GERMAN DEMOCRATIC REPUBLIC

**Convention concerning legal assistance in civil matters (with
exchange of letters). Signed at Paris on 30 January 1987**

Authentic texts: French and German.

Registered by France on 4 November 1988.

FRANCE
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE

**Convention d'entraide judiciaire en matière civile (avec
échange de lettres). Signée à Paris le 30 janvier 1987**

Textes authentiques : français et allemand.

Enregistrée par la France le 4 novembre 1988.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE FRENCH REPUBLIC AND THE
GERMAN DEMOCRATIC REPUBLIC CONCERNING LEGAL
ASSISTANCE IN CIVIL MATTERS

The President of the French Republic, and the Council of State of the German Democratic Republic,

Moved by a desire to develop and strengthen friendly relations between the two States in the spirit of the Final Act of the Conference on Security and Cooperation in Europe² and also to deepen their relations in various fields, including the field of legal assistance,

Have resolved to conclude this Convention concerning legal assistance in civil matters and to that end have appointed as their plenipotentiaries:

The President of the French Republic: Mr. Jean-Bernard Raimond, Minister for Foreign Affairs of the French Republic,

The Council of State of the German Democratic Republic: Mr. Oskar Fischer, Minister for Foreign Affairs of the German Democratic Republic,

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

TITLE I. GENERAL PROVISIONS

Article 1

1. The Contracting States undertake to extend to each other legal assistance in civil matters, at the request of their competent authorities and in accordance with the provisions of this Convention.

2. For the purposes of this Convention, civil matters shall include civil law, family law and commercial law.

Article 2

1. Within the framework of this Convention, the Ministries of Justice of the Contracting States shall communicate with each other directly and no fees shall be paid for their activities.

2. For the purpose of executing requests for legal assistance, the Ministry of Justice of the requested State shall forward to the competent authorities requests for assistance transmitted by the Ministry of Justice of the other State. Proof of execution of the requests shall be returned in the same manner.

3. The Ministries of Justice shall, upon request, communicate to each other all information concerning the laws in force in the fields covered by this Convention.

¹ Came into force on 8 June 1988, i.e., the thirtieth day following the exchange of the instruments of ratification, which took place at Berlin, in accordance with article 44 (1).

² *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

Article 3

Requests, applications and documents transmitted in application of the provisions of this Convention shall be accompanied by an official translation into the official language of the requested State unless otherwise provided for under this Convention. The translation shall be certified as accurate by a sworn translator or by any person empowered for that purpose in the requesting State.

Article 4

Provisions of this Convention relating to the nationals of each of the Contracting States may be applied to bodies corporate which are constituted according to the laws of the State in which their head office is located.

Article 5

The requested State may refuse to execute requests for assistance if those requests are incompatible with the maintenance of public order in the requested State.

TITLE II. ACCESS TO COURTS

Article 6

For the defence of their rights and interests, the nationals of one of the Contracting States shall have free access to courts in the territory of the other Contracting State under the same conditions as the nationals of that State and with the same rights and obligations in legal proceedings.

Article 7

The nationals of one Contracting State shall be entitled to legal aid in the other Contracting State under the same conditions as the nationals of that State.

Article 8

Requests for legal aid shall be accompanied by documents certifying the financial status of the applicant.

Article 9

1. Requests for legal aid and requests for additional information shall be transmitted by the Ministries of Justice.
2. The examination of requests for legal aid shall be carried out as a matter of urgency.

Article 10

1. The authority called upon to rule on the request for legal aid may, if necessary, request additional information concerning the financial resources of a person making the request from the competent authority of the Contracting State of which that person is a national; the requested party shall provide notification of any difficulties arising in connection with the examination of the request.

2. The authority which has ruled on this request shall make known its decision.

Article 11

Nationals of either Contracting State whose domicile is in one of the Contracting States and who are plaintiffs or intervening parties before the courts of the other Contracting State may not be required to deposit security or to make any other deposit to guarantee the costs of the proceedings by reason either of their status as foreigners or for lack of a domicile or residence in that State.

Article 12

1. Orders to pay for the costs and expenses of the proceedings, when issued in one of the Contracting States against a plaintiff or intervening party who is exempted from security or deposit pursuant to article 11 of this Convention or to the laws of the Contracting State in which the order is issued, shall, at the request of the creditor, be rendered enforceable without charge in the other Contracting State.

2. The preceding paragraph shall also apply to court decisions which subsequently determine the costs and expenses of the proceedings.

Article 13

Requests for exequatur without charge may be transmitted through the Ministries of Justice.

Article 14

Requests for an exequatur shall be accompanied by:

1. A copy of the decision showing the names and occupations of the parties. The terms of the decision shall indicate the costs and expenses, if any, as well as the court decisions for which the total cost is determined;
2. Any document proving that the court decisions have acquired the force of law and are enforceable in the State in which they originated;
3. A translation of these documents certified to be accurate, in the language of the requested State.

Article 15

1. The court of competent jurisdiction in the requested State shall rule on requests for exequatur without hearing the parties. It shall limit itself to verifying that the documents are produced and that the decisions have acquired the force of law and are enforceable. At the request of the plaintiff, the court shall assess the total charges for attestation, translation and certification and add those charges to the costs and expenses of the proceedings.

2. The parties shall have no recourse to appeal the decisions of the court of competent jurisdiction other than those available to them under the laws of the requested State.

Article 16

1. If a witness or an expert who is a national of one of the Contracting States or who has a domicile therein is summoned to appear before a court or a party having the authorization of a court of the other Contracting State, he or she may not be prosecuted, detained or subjected to any other restriction of personal liberty as a

result of findings of guilt or sentences pronounced prior to his or her entry into the requesting State.

2. The immunity provided for under the previous paragraph shall begin seven days before the date established for the hearing of the witness or expert and shall cease when the witness or expert, having had the opportunity to leave the requesting State over a period of seven consecutive days after judicial authorities have informed him or her that his or her presence is no longer required, remains in that State or returns there voluntarily after having left.

TITLE III. SERVICE OF WRITS AND EXTRA-JUDICIAL DOCUMENTS

Article 17

1. At the request of the competent authorities of one of the Contracting States, the competent authorities of the other Contracting State shall serve persons residing in their State with writs and extra-judicial documents.

2. Requests for service shall be transmitted by the Ministries of Justice. The Ministry of Justice of the requested State shall transmit the request to the competent authority for the purposes of executing it and shall transmit proof of service to the Ministry of Justice of the requesting State.

Article 18

1. The request for service shall indicate the following:

- (1) The competent authority making the request;
- (2) The nature of the proceeding for which service is required;
- (3) The name and address of the addressee and the State of which he or she is a national;
- (4) The nature of the documents to be served.

2. Bilingual forms completed in the language of the requesting State may be used to request service.

3. Requests for service and the documents to be served shall be forwarded in a single copy.

Article 19

1. Service of documents shall be effected in accordance with the laws of the requested State.

2. If the addressee cannot be found at the address given in the request for service, the requested authority shall make every effort to serve the documents.

3. Either a dated receipt signed by the addressee or a certificate from the requested authority indicating the manner, place, and date of service may be used as proof of service.

4. In the absence of an accompanying translation, the addressee may refuse to receive the document and service will be considered not to have occurred.

5. If the addressee refuses to receive the document, or if service does not occur for other reasons, the requesting authority shall be informed.

Article 20

The requested State shall bear the costs of serving writs or extra-judicial documents.

Article 21

The Contracting States may effect service of judicial documents upon their own nationals, without application of any compulsion, directly through their diplomatic or consular agents.

TITLE IV. LETTERS ROGATORY

Article 22

1. The judicial authorities of a Contracting State may, in the event of proceedings before them, request the judicial authorities of the other Contracting State by letter rogatory to take measures to obtain evidence and to perform other judicial acts.

2. Letters rogatory shall be transmitted by the Ministries of Justice. The Ministry of Justice of the requested State shall forward the letter to the competent judicial authority for the purposes of execution of the request and shall transmit proof of execution to the Ministry of Justice of the requesting State.

Article 23

The letter rogatory shall contain the following information:

1. The judicial authority from which the letter originates;
2. The first and last names of the parties, their addresses, places and dates of birth and the State of which they are nationals or, if necessary, the names and addresses of their legal representatives;
3. The purpose of the proceeding and a brief summary of the facts of the case;
4. Measures for the taking of evidence or other judicial acts to be performed;
5. The questions to be put to the persons to be examined and the facts about which they will answer questions.

Article 24

1. Execution of letters rogatory shall be effected in accordance with the laws of the requested State.

2. If the person to be questioned cannot be found at the address given in the letter, the requested judicial authority shall make every effort to satisfy the request.

3. Upon request, the judicial authority shall promptly notify the requesting judicial authority of the date and the place at which execution of the letter rogatory is to be effected. This notice may be sent directly by mail.

Article 25

When a letter rogatory cannot be executed, either in full or in part, the requesting judicial authority shall be informed immediately and the reasons for non-execution shall be stated. The communication containing this information shall be transmitted through the Ministries of Justice.

Article 26

Except for honoraria paid to experts, the requested State may not require the requesting State to pay or reimburse any expenses or taxes associated with the execution of a letter rogatory.

Article 27

1. A judicial authority may refuse to execute a letter rogatory pursuant to the provisions of article 5, or, if execution is not within the competence of judicial authorities in the requested State.

2. The requested State may not refuse to execute a letter rogatory solely on the grounds that it claims exclusive jurisdiction over the subject-matter of the legal action.

Article 28

Each Contracting State shall be free to seek execution, without application of any compulsion, of letters rogatory concerning its own nationals through its diplomatic and consular officials.

TITLE V. EXEMPTION FROM LEGALIZATION AND PUBLIC RECORDS

Article 29

1. Public records which have been drawn up in one of the Contracting States and which bear the signature and official seal of the person authorized to issue them shall be exempt from any requirement of additional authentication, legalization or apostil.

2. The following shall be considered public documents within the meaning of paragraph 1:

(1) For the French Republic, documents drawn up or issued by an administrative or judicial authority, a notary public, a clerk of the court or a bailiff.

For the German Democratic Republic, documents issued by a court or a State notary, the State Prosecutor's Office or another State organ.

(2) Official notations such as civil registry notations certifying a date, signature or conformity to an original document.

3. If there are sound reasons to doubt the validity of the signature or the seal on an official document, the Ministry of Justice of the Contracting State in which the document was produced may contact the Ministry of Justice of the Contracting State in which the document was issued in order to request authentication.

Article 30

1. Each Contracting State shall transmit — free of charge to the Contracting State making the request — official records and copies of judgements relating to the civil status of nationals of the requesting State, to be used for a specific administrative purpose.

2. Requests and official civil registry documents shall be transmitted by the diplomatic or consular channel; requests and copies of judgements shall be transmitted through the Ministries of Justice.

TITLE VI. RECOGNITION AND ENFORCEMENT OF JUDGEMENTS
RELATING TO MAINTENANCE OBLIGATIONS

Article 31

Provisions under this title shall apply to the recognition and enforcement of judgements regarding maintenance obligations which have been handed down by judicial authorities of the other Contracting State. For the purpose of this Convention, these judgements shall include agreements approved by a court.

Article 32

Judgements rendered by judicial authorities in one Contracting State shall be recognized and declared enforceable in the other Contracting State if they meet all of the following conditions:

1. The judicial authority rendering the judgement was competent, pursuant to article 33;
2. The summons containing the basic facts of the claim was duly notified or served on the defaulting party in accordance with the laws of the State of origin, and, in view of the circumstances, that party had sufficient time to protect his or her rights;
3. The judgement cannot be appealed and is enforceable in the State of origin;
4. An action between the same parties concerning the same claim as in the State of origin is either not pending before a judicial authority in the State in which recognition is sought, the claim being brought before those authorities for the first time, or, the claim has not resulted in a judgement which could not be appealed and is enforceable in the requested State;
5. The recognition and enforcement of a judgement are not incompatible with the maintenance of public order in the requested State.

Article 33

For the purposes of this Convention, the judicial authorities of the State of origin shall be considered competent:

1. If either the defaulter or the claimant of a maintenance allowance had a domicile in that State at the time proceedings were instituted;
2. If the defaulter and the claimant of a maintenance allowance were nationals of that State at the time proceedings were instituted.

Article 34

A public institution of one of the Contracting States, when it has provided services to the claimant of a maintenance allowance, may request recognition and enforcement of a judgement rendered between the claimant and the defaulter, if, according to the laws governing that institution, it is entitled to request recognition and enforcement of the judgement in place of the claimant.

Article 35

When a judgement orders provision of benefits in the form of periodic payments, enforcement shall be granted for payments already due as well as for payments due after the judgement.

Article 36

The Party requesting recognition and enforcement of a judgement relating to maintenance obligations shall produce:

1. A copy of the judgement meeting all requirements with respect to authenticity;
2. A certificate from the competent authority establishing that the judgement may no longer be appealed and that it is enforceable;
3. Where necessary, the original or a certified true copy of the documentary proof that the initial court summons containing the basic facts of the claim has been regularly notified or served to the defaulting party in accordance with the laws of the State of origin;
4. Where necessary, a document proving that the conditions laid down in article 34 have been fulfilled and that the services have been provided;
5. A translation certified as accurate of the documents mentioned in this article in the language of the requested State.

Article 37

1. The recognition and enforcement procedure shall be governed by the law of the requesting State unless there are provisions to the contrary in this Convention.

2. The judicial authority of the requested State shall limit itself to verifying that the conditions provided for under article 32 have been met and shall not examine any substantive questions.

3. Partial recognition or enforcement of a judgement may also be requested.

Article 38

1. Provisions of the articles under this title shall be applicable without regard to the date upon which the judgement was handed down.

2. Judgements handed down before the entry into force of this Convention shall be declared enforceable only for payments due thereafter.

TITLE VII. ASSISTANCE IN THE RECOVERY OF MAINTENANCE
ALLOWANCES FOR MINORS

Article 39

The Contracting States shall extend to each other upon request mutual assistance in the recovery of maintenance allowances for minors who are nationals of the Contracting State in question or whose habitual residence is in one of the two States. This assistance shall be free of charge.

Article 40

The Ministry of Justice of a Contracting State may transmit to the Ministry of Justice of the other Contracting State a request for mutual assistance in the recovery of maintenance allowances for minors.

Article 41

Mutual assistance for the recovery of maintenance allowances shall include:

1. Searching for the defaulter;
2. Holding hearings to request the defaulter to make voluntarily the payments due;
3. Initiation of proceedings to obtain recognition and enforcement of a judgement or the modification of a judgement previously rendered in respect of maintenance. Judgements shall include recognized agreements.

Article 42

1. A request for mutual assistance for the recovery of a maintenance allowance must include the following information:

- (1) The first and last name, place of residence, date and place of birth of the claimant, the State of which he or she is a national and the name and address of his or her legal representative;
- (2) The first and last name, place of residence, date and place of birth of the defaulter and the State of which he or she is a national. If his or her address is not known, all useful information that would make it possible to determine the address and the place of residence of the defaulter;
- (3) The purpose of the request.

2. For a request for recognition and enforcement or modification of a judgement, the documents mentioned in article 36, paragraphs 1, 2, 5 and, if necessary, paragraphs 3 and 4, must be attached.

Article 43

1. In order to recover a maintenance allowance:

The Ministry of Justice of the French Republic may instruct the competent legal assistance office to appoint an attorney and, if necessary, a bailiff; in this case legal assistance is extended as a right without regard to the financial resources of the recipient;

The Ministry of Justice of the German Democratic Republic shall contact the Ministry of Education which will take the necessary measures.

2. The Ministries of Justice shall keep each other informed regarding the results of execution of requests for mutual assistance.

TITLE VIII. FINAL PROVISIONS

Article 44

1. This Convention shall be subject to ratification. It shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification, which shall take place in Berlin.

2. This Convention shall remain in force for an unlimited period. It may be denounced through written notification by each of the High Contracting Parties. In the event of such notification, the Convention shall cease to have effect six months after the date of denunciation.

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

DONE at Paris, on 30 January 1987, in duplicate, one each in the French and German languages, both texts being equally authentic.

For the President
of the French Republic:
[JEAN-BERNARD RAIMOND]

For the Council of State
of the German Democratic Republic:
[OSKAR FISCHER]

EXCHANGE OF LETTERS

I

Paris, 30 January 1987

Sir,

I have the honour to refer to the Convention between the German Democratic Republic and the French Republic concerning mutual legal assistance in civil matters and am authorized to propose that the two Contracting States should agree as follows:

“On the basis of generally recognized principles of international law, including the sovereign right of each State to determine the conditions for the acquisition, maintenance or loss of its citizenship, the two Contracting Parties agree that only their nationals shall enjoy the benefits of the provisions of this Convention, with the exception of those articles for which the Convention is applicable to persons residing in each of the two States.”

I would be obliged if you would inform me of your Government's agreement to these provisions, the present letter, together with your response, constituting an agreement between our two Governments.

Please accept, Sir, etc.

[Signed]

OSKAR FISCHER
Minister for Foreign Affairs
of the German Democratic Republic

His Excellency Mr. Jean-Bernard Raimond
Minister for Foreign Affairs of the French Republic

II

Paris, 30 January 1987

Sir,

I acknowledge receipt of your letter of 30 January which reads as follows:

[See letter I]

I am authorized to state that your letter together with this response shall constitute an agreement between our two Governments.

Please accept, Sir, etc.

[Signed]

MR. JEAN-BERNARD RAIMOND
Minister for Foreign Affairs
of the French Republic

His Excellency Mr. Oskar Fischer
Minister for Foreign Affairs of the German Democratic Republic
