

No. 26699

**SPAIN
and
GERMAN DEMOCRATIC REPUBLIC**

Treaty on judicial assistance in civil matters (with exchange of letters). Signed at Madrid on 3 February 1988

Authentic texts: Spanish and German.

Registered by Spain on 22 June 1989.

**ESPAGNE
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE**

Convention relative à l'entraide judiciaire en matière civile (avec échange de lettres). Signée à Madrid le 3 février 1988

Textes authentiques : espagnol et allemand.

Enregistrée par l'Espagne le 22 juin 1989.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE KINGDOM OF SPAIN AND THE GERMAN DEMOCRATIC REPUBLIC ON JUDICIAL ASSISTANCE IN CIVIL MATTERS

The Kingdom of Spain and the German Democratic Republic,

For the purpose of promoting friendly cooperation between the two States on the basis of the Helsinki Final Act of the Conference on Security and Cooperation in Europe² and the Madrid Concluding Document,³ which follows up that Act,

Guided by the wish to regulate relations between the two States in the field of judicial assistance in civil matters,

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

For the Kingdom of Spain: H.E. Mr. Francisco Fernández Ordóñez, Minister for Foreign Affairs;

For the German Democratic Republic: H.E. Mr. Oskar Fischer, Minister for Foreign Affairs.

Chapter I. LEGAL PROTECTION

Article 1. 1. Nationals of one Contracting State shall have, in the territory of the other Contracting State, free access to the courts and may appear before them in civil matters under the same conditions as nationals of that Contracting State.

2. In the context of this Treaty, the term “civil matters” shall comprise matters pertaining to civil, family and commercial law.

3. Paragraph 1 shall also apply to bodies corporate which are constituted in accordance with the laws of a Contracting State and have their Head Office in the territory of that State.

Article 2. 1. Nationals of one Contracting State who appear before the courts of the other Contracting State shall not be required to provide security for court costs if they are domiciled or resident in the territory of one of the Contracting States.

2. Paragraph 1 shall also apply to bodies corporate which are constituted in accordance with the laws of a Contracting State and have their head office in the territory of that State.

Article 3. Nationals of one Contracting State shall benefit from legal aid in the other Contracting State under the same conditions and to the same extent as nationals of that Contracting State.

¹ Came into force on 31 May 1989, the last day of the month following the exchange of the instruments of ratification, which took place at Berlin on 28 April 1989, in accordance with article 41.

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

³ *Ibid.*, vol. 22 (1983), p. 1398 (American Society of International Law).

Article 4. 1. Decisions on requests for legal aid shall be subject to the submission of a certificate attesting that the applicant does not have or has only part of the means needed to meet the costs of the case.

2. The certificate shall be issued by the competent authority of the Contracting State in whose territory the applicant is domiciled or resident.

3. If the applicant is neither domiciled nor resident in either of the Contracting States, he may submit a certificate issued by the diplomatic or consular establishment of the Contracting State of which he is a national.

Article 5. The applicant may submit the request for legal aid through the competent authority of the Contracting State of which he is a national. This authority shall transmit the request to the competent authority of the other Contracting State by the means stipulated in article 9.

Article 6. The authority called upon to rule on the request may verify the accuracy of the certificate produced and, if necessary, request additional information from the competent authority of the other Contracting State.

Chapter II. JUDICIAL ASSISTANCE IN CIVIL MATTERS

Article 7. The Contracting States undertake to provide each other with judicial assistance in civil matters, at the request of their competent authorities, in application of the provisions of this Treaty.

Article 8. Judicial assistance shall comprise the service of judicial and extrajudicial documents, the submission and transmittal of evidence and the completion of other judicial proceedings.

Article 9. Letter rogatory shall be transmitted through the Ministries of Justice of the Contracting States, except where otherwise provided in this Treaty.

Article 10. Requests for the service of judicial and extrajudicial documents, the submission of evidence and the completion of other judicial proceedings, as well as all annexes, shall be drawn up in the language of the requesting State and accompanied by a translation into the language of the requested State.

Article 11. 1. Letters rogatory shall indicate:

- (a) The competent authority making the request;
- (b) The purpose of the request;
- (c) The names of the parties concerned, their nationality, domicile or residence and their function in the case;
- (d) The facts to be proved or the proceedings to be carried out; in the case of requests for service of documents, the address and nationality of the addressee, as well as the documents to be served.

2. Letters rogatory and accompanying documents shall be duly signed and shall bear the seal of the authority concerned. Certification shall not be required.

Article 12. 1. The requested State shall serve judicial and extrajudicial documents in accordance with its own legislation.

2. Proof of service shall be either a dated receipt signed by the addressee or an attestation by the requested authority that service has been effected, indicating the manner and date of service.

3. If the requested authority cannot effect service, it shall immediately communicate the reasons therefor to the requesting State.

Article 13. The Contracting States may, through their diplomatic or consular establishments, serve documents on their own nationals who are in the territory of the other Contracting State.

Article 14. 1. If a witness or expert who is a national of one of the Contracting States or who is domiciled therein is summoned to appear before an authority of the other Contracting State owing to a proceeding under way in that State, he may not be prosecuted, detained or subjected to any other restriction of his personal liberty for actions committed or convictions incurred prior to his entry into the requesting State.

2. The protection granted in paragraph 1 shall cease at the end of the fifth day after the authority has informed the witness or expert that his presence is no longer required, on condition that during that time, the witness or expert had the opportunity to leave the territory of that State but did not do so or returned voluntarily to that State after leaving it.

Article 15. 1. The requested State shall handle requests for the submission of evidence and the completion of other judicial proceedings in accordance with its own legislation.

2. At the request of the requesting State, procedures which differ from standard procedures may be used, provided that they are not incompatible with the basic principles of the legal system of the requested State.

3. Upon request, the requested State shall inform the requesting State of the date and place of execution of letters rogatory. This information may be communicated directly through the authority having competence to execute the letters rogatory.

4. If the person designated in the letters rogatory cannot be found at the address given, the necessary measures shall be taken to determine his residence.

5. If the letters rogatory cannot be executed, the reasons therefor shall be communicated to the requesting State.

Article 16. The requested State shall waive reimbursement of the costs connected with the provision of judicial assistance in accordance with the provisions of chapter II of this Treaty, except in respect of fees and reimbursements of experts.

Article 17. Judicial assistance may be refused if execution of the letters rogatory:

- (a) Is not within the competence of the authorities of the requested State; or
- (b) Might, in the opinion of the requested State, endanger its sovereignty or security or the basic principles of its legal system.

Chapter III. INFORMATION ON LEGISLATION IN FORCE

Article 18. 1. The Ministries of Justice of the Contracting States shall inform each other, upon request, of their regulations concerning matters covered by this Treaty.

2. The competent authorities of one Contracting State may request information on regulations from the other Contracting State in proceedings

concerning matters covered by this Treaty, through the respective Ministries of Justice. Information requests shall contain a summary of the facts and specific questions relating to those facts.

Chapter IV. DOCUMENTS

Article 19. 1. Documents which are received or sent by a court or other authority or by an authorized person in accordance with the regulations of one Contracting State, or which have been drawn up in the prescribed manner, may be used in the other Contracting State with no other form of authentication, provided that they are signed and bear the official seal.

2. Paragraph 1 shall equally apply to the authentication of signatures and copies of documents.

Article 20. 1. The Contracting States shall transmit to each other, without fee or charge, copies of official records relating to the civil status of nationals of the other Contracting State, provided that the information was documented after the entry into force of this Treaty.

2. Death certificates shall be transmitted immediately. Other official records shall be transmitted on a quarterly basis to the diplomatic or consular establishment of the other Contracting State.

Article 21. 1. At the request of the competent authorities, and for official use, the Contracting States shall transmit to each other, without fee or charge, copies of official records from the registry office and notifications of court decisions relating to the civil status of nationals of the other Contracting State. Reasons shall be given for such requests.

2. The diplomatic channel shall be used for the implementation of paragraph 1. In the case of notifications of court decisions, communications shall be made through the Ministries of Justice.

Article 22. Nationals of one Contracting State may address requests for copies of official records from the registry office directly to the competent authority of the other Contracting State. The records shall be sent, without fee or charge, to the diplomatic or consular establishment of the State of which the requesting party is a national.

Article 23. The copies from the registry office shall be issued in accordance with the legislation of the requested State.

Chapter V. ASSISTANCE IN CLAIMS FOR FAMILY MAINTENANCE PAYMENTS

Article 24. At the request of their competent authorities, the Contracting States shall assist each other, in application of the provisions of this Treaty, in the event of a maintenance claim for nationals who are minors.

Article 25. Assistance in maintenance claims shall comprise the adoption of measures to:

- (a) Determine the address of the domicile or residence of the person obligated to pay maintenance;
- (b) Urge that person to fulfil voluntarily his obligation to pay maintenance;
- (c) Initiate proceedings to enforce the payment of maintenance or the revision or execution of a decision on maintenance.

Article 26. 1. Requests for assistance in maintenance claims shall be handled, on the part of the Kingdom of Spain, by the Ministry of Justice, General Technical Secretariat (Ministerio de Justicia, Secretaría General Técnica) and, on the part of the German Democratic Republic, by the General Directorate of Assistance, Youth Education and Special Schools (Ministerium für Volksbildung, Hauptabteilung, Jugendhilfe, Heimerziehung und Sonderschulen) of the Ministry of Education. The respective Ministries shall inform each other of their compliance with such requests.

2. Paragraph 1 shall not prevent a claimant of minor age under the legislation of the other Contracting State from addressing himself directly to the competent authority of that State.

Article 27. Requests for assistance in maintenance claims shall contain the following information:

- (a) The name, address, date of birth and nationality of the claimant, as well as the full name and address of his legal representative;
- (b) The name, address, date of birth and nationality of the person obligated to pay maintenance or, if his address is unknown, any information which may serve to determine his place of residence;
- (c) The purpose of the request;
- (d) In the case of requests for recognition and enforcement or for revision of a decision on maintenance, the documents specified in article 34.

Chapter VI. RECOGNITION AND ENFORCEMENT OF DECISIONS ON MAINTENANCE

Article 28. 1. The provisions of this chapter shall apply to decisions rendered by the courts of a Contracting State on maintenance claims against parents by unmarried children under the age of 21, and to judicial decisions which modify a previous decision.

2. For the purposes of paragraph 1, the following shall also be considered judicial decisions:

- (a) Legal settlements concerning maintenance payments; and
- (b) Documents from the competent authorities on maintenance obligations.

Article 29. Decisions rendered by the courts of one Contracting State shall be recognized in the other Contracting State:

- (a) If they are enforceable under the legislation of the State in which they were rendered; and
- (b) If the courts which rendered them are competent under the provisions of article 31.

Article 30. Recognition of judicial decisions may be refused:

- (a) If a defendant who did not attend the proceedings was not duly summoned in accordance with the legislation of the State in which the decision was rendered, or was not summoned with sufficient advance notice to assert his rights;
- (b) If, in an action between the same parties concerning the same claim, a final decision was rendered previously in the State in which recognition is sought;

- (c) If an action between the same parties concerning the same claim is pending before a court of the State in which recognition is sought, and the claim was first brought before that court;
- (d) If recognition would violate the basic principles of the legal system of the State in which recognition is sought.

Article 31. For the purposes of this Treaty, the courts of the State in which the decision was rendered shall be considered competent:

- (a) If the plaintiff or defendant in a maintenance claim was domiciled in that State at the time proceedings were instituted;
- (b) If the plaintiff and the defendant in a maintenance claim were nationals of that State at the time proceedings were instituted; or
- (c) If a decision was rendered on entitlement to maintenance in connection with the dissolution or determination of the non-existence of matrimony, and the competence of the courts of the State in which the decision was rendered has been recognized in accordance with the legislation of the requested State.

Article 32. 1. Recognition shall be granted solely on the basis of whether the requirements provided for in article 29 have been met, and in the absence of any of the grounds for refusal provided for in article 30. The decision shall not be subject to further conditions.

2. Judicial decisions rendered in one of the Contracting States shall be recognized in the other without need for procedures of any kind.

Article 33. 1. The enforcement of the decisions of the courts of one of the Contracting Parties shall be authorized and carried out in the other:

- (a) If they are enforceable in the State of origin;
- (b) If they fulfil the conditions required for recognition in the requested State.

2. The procedure for exequatur and subsequent enforcement shall be governed by the law of the requested State unless otherwise stipulated in this Treaty.

Article 34. 1. Requests for enforcement may be made through the Ministries of Justice of the Contracting States. They may also be submitted directly to the competent court of the State in which enforcement is sought.

The competent courts shall be:

- In Spain, the Court of First Instance;
- In the German Democratic Republic, the Municipal Court.

2. The request shall be accompanied by:

- (a) A certified copy of the decision;
- (b) In cases where the defendant did not attend the proceedings, a document certifying that he was duly summoned in accordance with the legislation of the State in which the decision was rendered;
- (c) Where applicable, a document certifying that the requirements set forth in article 37 have been met;
- (d) A translation of the documents mentioned in this article into the language of the State in which enforcement is sought.

Article 35. If legal aid has been granted to a person entitled to maintenance in the State in which the decision was rendered, the same exemption shall be granted in the procedure to authorize and carry out enforcement in the State in which it is sought.

Article 36. 1. In application of article 28, legal settlements and documents which have been approved or issued in one Contracting State and which are enforceable therein shall be recognized and enforced in the other Contracting State in the same manner as judicial decisions.

2. The provisions of articles 29 to 35 shall apply to the procedure for authorizing enforcement.

Article 37. If a competent authority or institution of one Contracting State has paid benefits to the person entitled to maintenance, it may require recognition and enforcement of a decision rendered in a lawsuit between the person entitled to maintenance and the person obligated to pay it if, under the relevant legislation, the authority or institution is authorized to request, in place of the person entitled to maintenance, the recognition and enforcement of that decision.

Chapter VII. FINAL PROVISIONS

Article 38. This Treaty shall apply to judicial decisions and settlements and to the documents mentioned in article 28 irrespective of the date on which they were rendered, approved or issued. Should that date be prior to the entry into force of this Treaty, they shall be declared enforceable only for payments which fall due after its entry into force.

Article 39. The Contracting States shall, in accordance with their internal legislation, facilitate economic transfers which result from the enforcement authorized under this Treaty.

Article 40. This Treaty shall be subject to ratification. The instruments of ratification shall be exchanged in Berlin.

Article 41. This Treaty shall enter into force on the last day of the month following that in which the instruments of ratification are exchanged.

Either Contracting State may denounce this Treaty in writing through the diplomatic channel. The denunciation shall take effect on the last day of the sixth month following that in which the denunciation is transmitted to the other Contracting State.

DONE at Madrid on 3 February 1988 in two originals, each in Spanish and German, both texts being equally authentic.

IN WITNESS WHEREOF the plenipotentiaries of the Contracting States have signed and sealed this Treaty.

For the Kingdom of Spain:
Ad referendum

[Signed]

FRANCISCO FERNÁNDEZ ORDÓÑEZ
Minister for Foreign Affairs

For the German Democratic Republic:

[Signed]

OSKAR FISCHER
Minister for Foreign Affairs

EXCHANGE OF LETTERS

I

Madrid, 3 February 1988

Sir,

I have the honour to refer to the Treaty on Judicial Assistance in Civil Matters between the German Democratic Republic and the Kingdom of Spain, and I have been authorized to propose that the German Democratic Republic and the Kingdom of Spain agree on the following:

“On the basis of generally recognized principles of international law, including the sovereign right of any State to establish conditions for the acquisition, possession or loss of nationality, both Parties have agreed that only their nationals may benefit from the provisions of this Treaty, except with respect to those articles which apply to persons who are resident in one of the two States.”

I would be grateful if you would inform me of the agreement of your Government to the above-mentioned provisions, so that this letter and your reply may constitute an integral part of this Treaty.

Accept, Sir, etc.

[Signed]

OSKAR FISCHER

His Excellency Mr. Francisco Fernández Ordóñez
Minister for Foreign Affairs
of Spain

II

Madrid, 3 February 1988

Sir:

I have the honour to acknowledge receipt of your letter, which reads as follows:

[See letter I]

I have been authorized to inform you that your letter and my reply shall constitute an agreement between our two States which forms an integral part of the above-mentioned Treaty.

Accept, Sir, etc.

[Signed]

Francisco Fernández Ordóñez
Minister for Foreign Affairs
Kingdom of Spain

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