

No. 27065

**FINLAND
and
GERMAN DEMOCRATIC REPUBLIC**

Agreement on legal assistance in civil, family and criminal matters. Signed at Berlin on 1 October 1987

Authentic texts: Finnish and German.

Registered by Finland on 26 January 1990.

**FINLANDE
et
RÉPUBLIQUE DÉMOCRATIQUE ALLEMANDE**

Accord relatif à l'entraide judiciaire en matière civile, familiale et pénale. Signé à Berlin le 1^{er} octobre 1987

Textes authentiques : finnois et allemand.

Enregistré par la Finlande le 26 janvier 1990.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF FINLAND AND THE
GERMAN DEMOCRATIC REPUBLIC ON LEGAL ASSISTANCE
IN CIVIL, FAMILY AND CRIMINAL MATTERS

The Republic of Finland and the German Democratic Republic,

Seeking to promote friendly cooperation between the two States on the basis of the purposes and principles for inter-State relations laid down in the Final Act of the Helsinki Conference on Security and Cooperation in Europe,²

Desiring to regulate relations between the two States in the area of legal assistance in civil, federal and criminal matters,

Have agreed to conclude this Convention and have, for this purpose, appointed as their plenipotentiaries:

The Republic of Finland: Mr. Kalevi Sorsa, Minister for Foreign Affairs;

The German Democratic Republic: Mr. Hans-Joachim Heusinger, Vice-Chairman of the Council of Ministers and Minister of Justice,

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

PART I. GENERAL PROVISIONS

Article 1. ACCESS TO THE COURTS

1. The nationals of one Contracting State shall have in the territory of the other Contracting State free access to the competent authorities in civil, family and criminal matters in order to safeguard their rights and interests and may appear before such authorities under the same conditions as nationals of that Contracting State.

2. Nationals of a Contracting State are persons who, under the legislation of that State, have its nationality.

3. Paragraph 1 shall apply, as appropriate, to bodies corporate and other institutions and organizations having legal capacity or the capacity to sue and be sued, which are constituted in accordance with the legislation of a Contracting State and have their head office in the territory of that State.

Article 2. EXEMPTION FROM “CAUTIO JUDICATUM SOLVI”

1. Nationals of one Contracting State who appear before the courts of the other Contracting State shall be exempted from the payment of security for the costs of the proceedings.

¹ Came into force on 29 June 1989, i.e., the thirtieth day following the exchange of the instruments of ratification, which took place at Helsinki on 30 May 1989, in accordance with article 44 (1).

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

2. Paragraph 1 shall apply, as appropriate, to bodies corporate and other institutions and organizations having legal capacity or the capacity to sue and be sued, which are constituted in accordance with the legislation of a Contracting State and have their head office in the territory of that State.

Article 3. EXEMPTION FROM COSTS

The nationals of one Contracting State shall, in the territory of the other Contracting State, be exempted from the costs of the proceedings and the obligation to pay such costs in advance and shall also be provided, free of charge, with an attorney and legal advice under the same conditions and to the same extent as nationals of that Contracting State.

Article 4. REQUEST FOR EXEMPTION FROM COSTS

1. A request for exemption from costs shall be accompanied by a certificate attesting that the applicant does not have the means needed to meet the costs of the case. The certificate shall be issued by the competent authority of the Contracting State in whose territory the applicant is domiciled or resident.

2. If the applicant is neither domiciled nor resident in the territory of one of the Contracting States, a certificate from the diplomatic mission or consular establishment of his State of nationality competent in respect of his place of domicile or residence shall suffice.

Article 5. TRANSMITTAL OF THE REQUEST

A request for exemption from costs may be submitted through the competent authority of the Contracting State in whose territory the applicant is domiciled or resident. The said authority shall transmit the request and the certificate in accordance with article 4 to the authority of the other Contracting State by the means stipulated in article 12.

Article 6. EXEMPTION FROM LEGALIZATION

Requests and applications as well as accompanying papers and documents which have been issued or certified by the competent authorities and are transmitted in compliance with the provisions of this Convention shall not require legalization or similar formalities.

*Article 7. TRANSMITTAL OF CIVIL REGISTRATION CERTIFICATES
AND OTHER DOCUMENTS*

1. The Contracting States shall, in implementation of the provisions of this Convention and in accordance with their legislation, transmit to each other, at the request of the competent authorities, documents relating to the civil status, education and occupation of nationals of the other Contracting State.

2. The documents shall be transmitted free of fee or charge and without a translation.

Article 8. INFORMATION CONCERNING APPLICABLE LEGISLATION

The Contracting Parties shall provide each other, on request, with information concerning legislation which is or was in force in their territory in respect of the matters dealt with under this Convention.

Article 9. INFORMATION FROM POLICE RECORDS

The Contracting Parties shall provide each other, upon request, with information from police records in accordance with their legislation for pending criminal proceedings in the manner set forth in article 12.

PART II. LEGAL ASSISTANCE IN CIVIL, FAMILY AND CRIMINAL MATTERS

Article 10. PROVISION OF LEGAL ASSISTANCE

1. The judicial authorities of the Contracting Parties shall grant each other, on request, legal assistance in civil, family and criminal matters in accordance with the provisions of this Convention.

2. The following shall be considered to be judicial authorities for the purposes of this Convention:

In the German Democratic Republic: the courts, the Public Prosecutor's Office, the State notary's offices and youth aid services;

In the Republic of Finland: the courts and public prosecutors.

3. Other authorities that are competent in civil, family and criminal matters shall transmit their requests for legal assistance through the judicial authorities of the requesting State.

Article 11. SCOPE OF LEGAL ASSISTANCE

Legal assistance shall include the delivery of documents; interrogation of witnesses, experts, litigants and other persons concerned; performance of acts required in connection with investigations and judicial proceedings, and the transmission of evidence, information and documents.

Article 12. METHOD OF COMMUNICATION

The Ministry of Justice or the General Public Prosecutor of the German Democratic Republic and the Ministry of Justice of the Republic of Finland shall communicate directly with each other in providing legal assistance.

Article 13. CONTENT AND FORM OF REQUESTS

1. Requests for legal assistance shall be submitted in writing; they shall indicate the following information:

(a) The judicial authority making the request and, if known, the judicial authority requested;

(b) The purpose of the request;

(c) The names of the parties concerned, their nationality, profession, domicile or residence and their function in the case;

(d) Should the need arise, the names and addresses of their legal representatives;

(e) The facts to be proved or the obligations to be enforced, together with a summary of the facts if one is required for an understanding of the matter; in the case of requests for delivery, in particular, the address and nationality of the addressee and the documents to be delivered;

(f) In criminal matters, a statement describing the actual circumstances of the criminal offence committed and a legal evaluation of it.

2. Requests for legal assistance and attached documents shall be signed and bear the seal or stamp of the judicial authority.

Article 14. LANGUAGES AND TRANSLATIONS

1. Requests for legal assistance and enclosed documents which are not drawn up in the official language or one of the official languages of the requested State shall be accompanied by a certified translation.

2. The official languages are:

In the German Democratic Republic: German;

In the Republic of Finland: Finnish and Swedish.

EXECUTION OF REQUESTS

Article 15

1. Requests for legal assistance shall be executed in accordance with the legislation of the Contracting State to which the requested judicial authority belongs.

2. On application by the requesting judicial authority, a procedure which does not comply with legislation may be used provided that it is not incompatible with the public law of the requested State.

3. On application, the requested judicial authority shall inform the requesting judicial authority and the persons concerned or their representatives of the place and date of execution of the request for judicial assistance so that the persons concerned may be aware of their rights with regard to legal action under the legislation of the requested State.

4. The judicial authorities concerned may, on application, be present during the execution of the request for judicial assistance if the requested State consents.

Article 16

1. If the requested judicial authority is not competent to execute the request for judicial assistance, it shall transmit the request to the competent judicial authority and shall so inform the requesting judicial authority.

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

3. The requested judicial authority shall inform the requesting judicial authority in writing of the execution of the request for judicial assistance. If the requested judicial authority cannot execute the request, it shall so inform the requesting judicial authority, indicate the reasons and return the documents.

Article 17. SERVICE OF DOCUMENTS

1. If the document to be served is not accompanied by a translation in the official language or one of the official languages of the requested State, the requested judicial authority shall transmit the document to the addressee only if he is prepared to receive it voluntarily. If, on this ground, he refuses to receive the document, service shall be considered void.

2. Requests for service of documents shall be accompanied by two copies of the documents to be served.

3. A request for service of a summons on a person who is a resident of the territory of the requested State shall be transmitted to that State not later than 45 days prior to the date set for the appearance before the requesting judicial authority.

4. A summons may not contain any threat of compulsory measures in case of the non-appearance of the person summoned.

Article 18. CONFIRMATION OF SERVICE OF DOCUMENTS

Service of documents shall be confirmed in accordance with the legislation of the requested State. The confirmation of service shall contain information indicating the manner, place and date of service and name of the addressee and bear the seal or stamp of the competent authority.

Article 19. SERVICE OF DOCUMENTS ON ONE'S OWN CITIZENS

The Contracting States may service, without coercion, documents on their citizens who are residing in the territory of the other Contracting State through their diplomatic or consular missions.

Article 20. RIGHT TO REFUSE TO TESTIFY

1. A witness or expert who is summoned by reason of a request for legal assistance before a judicial authority of the requesting or the requested State may refuse to testify, if the right or obligation to refuse to testify is provided for under the legislation of the requesting or the requested State.

2. The requesting judicial authority shall attach the legal provisions concerning the right or obligation to refuse to testify to requests for the examination of a witness or the rendering of an expert opinion.

Article 21. IMMUNITY

1. No person, regardless of his nationality, who is summoned by a judicial authority of the requesting State to appear in a civil, family or criminal case may be prosecuted, detained or subjected to any other restriction of his personal freedom on the grounds of actions carried out or sentences handed down prior to his entry into the requesting State.

2. No indicted or accused person, regardless of his nationality, who is summoned by a judicial authority of the requesting State in order to stand trial on criminal charges for an action attributed to him may be prosecuted, detained or subjected to any other restriction of his personal freedom there on the grounds of actions or convictions which pre-date his entry into the requesting State and are not referred to in the summons.

3. The protection provided under paragraphs 1 and 2 of this article shall cease if the person in question has not left the territory of the requesting State within eight days from the day on which he is informed by the competent judicial authority that his presence is no longer required even though he had the opportunity to do so or if, after having left the territory of that State, he voluntarily returned to it.

4. The requesting State shall be obliged to provide remuneration to witnesses or experts and reimburse them for travel and living expenses. The summons shall indicate the remuneration to which the witness or expert is entitled. On application by the witness or expert, the requesting State shall provide him with an advance in order to cover the corresponding expenses.

Article 22. COSTS OF LEGAL ASSISTANCE

Costs connected with the execution of requests for legal assistance shall be defrayed by the requested State.

Article 23. REFUSAL OF LEGAL ASSISTANCE

1. Legal assistance may be refused if execution of the request:

(a) Is not within the competence of the judicial authority of the requested State;

(b) Might impair the sovereignty, security or basic principles of public law of the requested State.

2. Legal assistance in criminal matters may also be refused if:

(a) The action forming the basis for the request is not punishable under the legislation of the requested State;

(b) Criminal prosecution for the action forming the basis for the request is not admissible under the legislation of the requested State by reason of limitation of time, amnesty, pardon or another legal ground;

(c) By reason of the action forming the basis for the request against the person accused or the defendant, preliminary proceedings or judicial proceedings have already been instituted in the requested State or have been concluded through a judicial ruling or otherwise.

PART III. ASSISTANCE IN THE ENFORCEMENT OF MAINTENANCE CLAIMS

Article 24. PROVISION OF ASSISTANCE

Upon request by their competent authorities, the Contracting States, shall, in accordance with the provisions of this Convention, provide each other with assistance for under-age nationals of the Contracting States in the enforcement of maintenance claims.

Article 25. TRANSMITTAL OF REQUESTS

1. Requests for assistance in the enforcement of maintenance claims shall be transmitted

By the German Democratic Republic through the Ministry for National Education, Hauptabteilung Jugendhilfe, Heimerziehung und Sonderschulen; and

By the Republic of Finland through the Ministry of Foreign Affairs.

The Ministries shall inform each other about the execution of requests.

2. Paragraph 1 shall not preclude the possibility that a claimant, in accordance with the legislation of the other Contracting State, can apply directly to the competent authority of that State.

Article 26. SCOPE OF ASSISTANCE

1. Assistance in the enforcement of maintenance claims shall include the introduction of measures to:

(a) Establish the domicile or residence of the person required to pay the maintenance grant;

(b) Call upon persons required to pay the maintenance grant to comply voluntarily with their obligations to do so;

(c) Initiate a procedure to establish paternity, ensure payment of the maintenance claim, execute court decisions or revise decisions concerning maintenance claims. Court settlements and documents from the competent authorities concerning maintenance obligations shall also be considered court decisions.

2. Assistance for legitimate claimants under paragraph 1 shall be provided free of charge.

Article 27. CONTENT OF REQUESTS FOR ASSISTANCE

Requests for assistance in the enforcement of maintenance claims shall include:

(a) Information on the identity, nationality and address of the claimant, and the name and address of his representative;

(b) Information on the identity, nationality and address of the person required to pay the maintenance grant; if his address is unknown, all available information providing a basis for determining his address and whereabouts;

(c) The object of the request;

(d) The documents referred to in article 33 in cases involving an application for the recognition, execution or revision of a court decision on maintenance claims.

PART IV. RECOGNITION AND EXECUTION

Article 28. SCOPE OF APPLICATION

1. The provisions of this Part shall apply to decisions rendered by a court of a Contracting State on maintenance claims by children who are not married and have not yet completed their twenty-first year in respect of their parents. This shall also include court decisions which revise an earlier decision.

2. The following shall also be considered court decisions in accordance with paragraph 1 of this article:

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

Article 29. REQUIREMENTS FOR RECOGNITION AND ENFORCEMENT

Court decisions under article 28, which have been rendered in the territory of a Contracting State, shall be recognized and declared enforceable in the territory of the other Contracting State,

- (a) If the decision is final and enforceable under the legislation of the State where it was rendered; and
- (b) If the court which rendered the decision was competent under article 31.

Article 30. DENIAL OF RECOGNITION AND ENFORCEMENT

Recognition and enforcement of court decisions may be denied,

- (a) If a defendant who has not appeared for the proceedings was summoned irregularly or without sufficient time under the legislation of the State where decision was passed to enable him to assert his rights;
- (b) If a final decision was rendered previously in court proceedings between the same parties in respect of the same case in the territory of the requested State;
- (c) If proceedings are pending between the same parties in respect of the same case before a court of the requested State and that court was the first to be appealed to;
- (d) If a court decision concerning the same case between the same parties was rendered in a third State and that decision is to be recognized in the requested State; or
- (e) If recognition or granting of the exequatur would be contrary to basic principles of the legal system of the requested State.

Article 31. COMPETENCE

The courts in the State where the decision is to be rendered shall be considered competent for the purposes of this Convention,

- (a) If the person liable to pay maintenance or the person entitled to maintenance had his domicile in the territory of that State when the proceedings were instituted;
- (b) If the person entitled to maintenance and the person liable to pay maintenance were nationals of that State when the proceedings were instituted; or
- (c) If a decision was rendered concerning the maintenance claim in connection with the dissolution or declaration of nullity of a marriage and the competence of the courts of the State where the decision was rendered is recognized under the legislation of the requested State.

Article 32. RIGHT OF THE COMPETENT AUTHORITIES TO LODGE REQUESTS

If a competent authority of one of the Contracting States has awarded payments to a person entitled to maintenance, it may request recognition and execution of a decision between the person entitled to maintenance and the person liable to pay maintenance, if the said authority is, under the applicable legislation, empowered to request, on behalf of the person entitled to maintenance, recognition and execution of the decision.

Article 33. REQUEST FOR THE GRANTING OF EXEQUATUR

1. A request for the granting of exequatur may be transmitted in the case of the German Democratic Republic through the Ministry of Justice, and in the case of the Republic of Finland through the Ministry of Foreign Affairs. The request may also be submitted directly to the competent court of the requested State.

2. The request shall be accompanied by:

(a) A copy of the decision with a certificate of *res judicata*;

(b) An attestation establishing that a party sued, who did not appear for the proceedings, was summoned regularly in accordance with the laws of the State where the decision was rendered;

(c) Where necessary, a document verifying that the conditions stipulated in article 32 have been met;

(d) A translation of the documents referred to in this article in the or one of the official languages of the requested State.

Article 34. PROCEDURE

1. The procedure for granting exequatur and execution shall be determined according to the laws of the requested State, in so far as this Convention does not provide otherwise.

2. In granting exequatur, it shall be determined whether the conditions stipulated in article 29 are met and whether none of the grounds for denial referred to in article 30 apply. The decision need not be otherwise verified.

Article 35. EXECUTION OF COURT SETTLEMENTS AND DOCUMENTS

Court settlements and documents under article 28, which have been confirmed or drawn up in one Contracting State and are executable there shall be declared executable in the other Contracting State under the same conditions as the court decisions referred to in this Convention, provided that those conditions are applicable.

Article 36. PERIOD OF APPLICABILITY

This Convention shall apply to all court decisions, court settlements and documents under article 28 regardless of the date on which they were rendered, confirmed or drawn up. If that date occurs before the entry into force of the Convention, they shall be declared executable only for payments due after the entry into force.

PART V. UNDERTAKING OF PROSECUTION

Article 37. OBLIGATION TO PROSECUTE

The Contracting Parties assume the obligation to prosecute under their domestic law, at the request of the other Contracting Party, their nationals who are suspected of having committed an offence in the territory of the requesting State.

Article 38. CONTENT OF REQUESTS

1. A request to undertake prosecution shall be submitted in writing; it shall indicate the following information:

- (a) The authority making the request;
- (b) A description of the offence and information concerning the place and date of its commission;
- (c) Available evidence concerning the offence;
- (d) The domestic legislation of the requesting State applicable to the offence; in cases involving traffic violations, the traffic regulations in force where the offence was committed;
- (e) Information concerning the identity, nationality and domicile or residence of the offender and, where necessary, other information which may serve to establish his identity.

2. Preliminary documents and evidentiary material shall not be accompanied by a translation.

Article 39. METHOD OF COMMUNICATION

In requesting the undertaking of criminal prosecution, the Ministry of Justice or the General Procurator of the German Democratic Republic and the Ministry of Justice of the Republic of Finland shall communicate with each other directly.

Article 40. INFORMATION ON DEFINITIVE DECISIONS

The requested State shall inform the requesting State about a decision taken to initiate or conclude criminal proceedings and shall transmit a copy of the decision upon request.

Article 41. EFFECT OF UNDERTAKING CRIMINAL PROSECUTION

If a Contracting State is requested to undertake criminal prosecution, the requirement for prosecution under the domestic legislation of the requesting State shall cease to apply upon the entry into force of the definitive decision by the competent authorities of that State.

PART VI. FINAL PROVISIONS

Article 42

The provisions of this Convention shall not affect the rights and obligations of the Contracting States under other international conventions which were concluded prior to the entry into force of this Convention.

Article 43

This Convention shall be ratified. The instruments of ratification shall be exchanged in Helsinki.

Article 44

1. This Convention shall enter into force on the thirtieth day after the exchange of the instruments of ratification.

2. Either Contracting State may denounce this Convention in writing. Denunciation shall become effective six months after the other Contracting State has been informed of it.

DONE at Berlin, on 1 October 1987, in duplicate in the Finnish and German languages, both texts being equally authentic.

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

For the Republic of Finland:

KALEVI SORSA

For the German Democratic Republic:

HANS-JOACHIM HEUSINGER
