

CONVENTION ON CIVIL PROCEDURE

(Concluded 1 March 1954)

The States signatory to the present Convention;

Desiring to make in the Convention of 17th July 1905, on civil procedure, the improvements suggested by experience;

Have resolved to conclude a new Convention to this effect, and have agreed upon the following provisions -

I. COMMUNICATION OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS

Article 1

In civil or commercial matters, the service of documents addressed to persons abroad shall be effected in the Contracting States on request of a consul of the requesting State, made to the authority which shall be designated by the State addressed. The request, specifying the authority originating the document forwarded, the names and capacities of the parties, the address of the addressee, and the nature of the document in question, shall be in the language of the requested authority. This authority shall send to the consul the certificate showing service or indicating the fact which prevented it.

All difficulties which may arise in connection with the consul's request shall be settled through diplomatic channels.

Any Contracting State may declare, in a communication addressed to the other Contracting States, that it intends that requests for service to be effected on its territory, giving the specifications mentioned in the first paragraph, be addressed to it through diplomatic channels.

The foregoing provisions shall not prevent two Contracting States from agreeing to allow direct communication between their respective authorities.

Article 2

Service shall be effected by the authority which is competent according to the laws of the State addressed. That authority, except in the cases mentioned in Article 3, may confine itself to serving the document by delivery to an addressee who accepts it voluntarily.

Article 3

The request shall be accompanied by the document to be served in duplicate.

If the document to be served is written, either in the language of the requested authority, or in the language agreed on between the two States concerned, or if it is accompanied by a translation into one of those languages, the requested authority, should the desire be expressed in the request, shall have the document served by a

method prescribed by its internal legislation for effecting similar service, or by a special method, unless it is contrary to that law. If such a desire is not expressed, the requested authority shall first seek to effect delivery in accordance with Article 2.

Unless there is agreement to the contrary, the translation provided for in the preceding paragraph shall be certified as correct by the diplomatic officer or consular agent of the requesting State or by a sworn translator of the State addressed.

Article 4

Where a request for service complies with Articles 1, 2 and 3, the State on the territory of which it has to be effected may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

Article 5

Service shall be proved by either a dated and legalised receipt from the addressee or a certificate from the authority of the State addressed, establishing the fact, method and date of the service.

The receipt or the certificate should appear on one of the two copies of the document served, or be annexed thereto.

Article 6

The provisions of the foregoing Articles shall not interfere with -

(1) the freedom to send documents, through postal channels, directly to the persons concerned abroad;

(2) the freedom of the persons concerned to have service effected directly through the judicial officers or competent officials of the country of destination;

(3) the freedom of each State to have service effected directly by its diplomatic or consular agents of documents intended for persons abroad.

In each of these cases, the freedom mentioned shall only exist if allowed by conventions concluded between the States concerned or if, should there be no convention, the State on the territory of which service must be effected does not object. That State may not object when, in the cases mentioned in sub-paragraph 3 of the above paragraph, the document is to be served without any compulsion on a national of the requesting State.

Article 7

The service of judicial documents shall not give rise to reimbursement of taxes or costs of any nature.

However, should there be no agreement to the contrary, the State addressed will have the right to require from the requesting State the reimbursement of the costs

occasioned by the employment of a judicial officer or by the use of a particular method of service in the cases mentioned in Article 3.

II. LETTERS OF REQUEST

Article 8

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, apply, by means of a Letter of Request, to the competent authority of another Contracting State to request it, within its jurisdiction, to obtain evidence, or to perform some other judicial act.

Article 9

Letters of Request shall be transmitted by the consul of the requesting State to the authority which shall be designated by the State of execution. That authority shall send to the consul the document establishing the execution of the Letter of Request or indicating the fact which prevented its execution.

Any difficulties which may arise in connection with the transmission shall be settled through diplomatic channels.

Any Contracting State may declare, by a communication addressed to the other Contracting States, that it intends that Letters of Request to be executed on its territory be transmitted through diplomatic channels.

The foregoing provisions shall not prevent two Contracting States agreeing to allow the direct transmission of Letters of Request between their respective authorities.

Article 10

Unless there is agreement to the contrary, the Letter of Request must be written either in the language of the requested authority, or in the language agreed between the two States concerned, or else it must be accompanied by a translation, done in one of those languages and certified as correct by a diplomatic officer or consular agent of the requesting State of origin or by a sworn translator of the State of execution.

Article 11

The judicial authority, to which the Letter of Request is addressed, shall be obliged to comply with it using the same measures of compulsion as for the execution of orders issued by the authorities of the State of execution or of requests made by parties in internal proceedings. These measures of compulsion shall not necessarily be employed where the appearance of the parties to the case is involved.

The requesting authority shall, if it so requests, be informed of the date and place of execution of the measure sought, so that the party concerned may be able to be present.

The execution of the Letter of Request may be refused only -

- (1) if the authenticity of the document is not established;
- (2) if, in the State of execution, the execution of the Letter does not fall within the functions of the judiciary;
- (3) if the State, on the territory of which the execution is to be effected, considers that its sovereignty or its security would be prejudiced thereby.

Article 12

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be automatically sent to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 13

In all cases where the Letter of Request is not executed by the requested authority, the latter shall immediately so inform the requesting authority, indicating, in the case of Article 11, the reasons why execution of the Letter was refused and, in the case of Article 12, the authority to which the Letter has been transmitted.

Article 14

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, provided that this is not contrary to the law of the State of execution.

Article 15

The provisions of the foregoing Articles shall not exclude the right of each State to have Letters of Request executed directly by its diplomatic officers or consular agents, if that is allowed by conventions concluded between the States concerned or if the State on the territory of which the Letter is to be executed does not object.

Article 16

The execution of Letters of Request shall not give rise to reimbursement of taxes or costs of any nature.

However, unless there is agreement to the contrary, the State of execution shall have the right to require the State of origin to reimburse the fees paid to witnesses or experts, and the costs occasioned by the employment of a judicial officer, rendered necessary because the witnesses did not appear voluntarily, or the costs resulting from any application of the second paragraph of Article 14.

III. SECURITY FOR COSTS

Article 17

No security, bond or deposit of any kind, may be imposed by reason of their foreign nationality, or of lack of domicile or residence in the country, upon nationals of one of the Contracting States, having their domicile in one of these States, who are plaintiffs or parties intervening before the courts of another of those States.

The same rule shall apply to any payment required of plaintiffs or intervening parties as security for court fees.

All conventions under which Contracting States have agreed that their nationals will be exempt from providing security for costs or for payment of court fees regardless of domicile shall continue to apply.

Article 18

Orders for costs and expenses of the proceedings, made in one of the Contracting States against the plaintiff or party intervening exempted from the provision of security, deposit or payment under the first and second paragraphs of Article 17, or under the law of the State where the proceedings have been instituted, shall, upon request made through diplomatic channels, be rendered enforceable without charge by the competent authority, in each of the other Contracting States.

The same rule shall apply to the judicial decisions whereby the amount of the costs of the proceedings is subsequently fixed.

Nothing in the foregoing provisions shall prevent two Contracting States from agreeing that applications for enforcement may also be made directly by the interested party.

Article 19

The order for costs and expenses shall be rendered enforceable without a hearing, but subject to subsequent appeal by the losing party in accordance with the legislation of the country where enforcement is sought.

The authority competent to decide on the request for enforcement shall itself examine -

(1) whether, under the law of the country where the judgment was rendered, the copy of the judgment fulfils the conditions required for its authenticity;

(2) whether, under the same law, the decision has the force of *res judicata*;

(3) whether that part of the judgment which constitutes the decision is worded in the language of the authority addressed, or in the language agreed between the two States concerned, or whether it is accompanied by a translation, in one of those languages and, unless there is agreement to the contrary, certified as correct by a diplomatic officer or consular agent of the requesting State or by a sworn translator of the State addressed.

To satisfy the conditions laid down in the second paragraph, sub-paragraphs 1 and 2, it shall be sufficient either for there to be a statement by the competent authority of the State of origin establishing that the judgment has the force of *res judicata*, or for

duly legalised documents to be presented showing that the judgment has the force of res judicata. The competence of the authority mentioned above shall, unless there is agreement to the contrary, be certified by the highest official in charge of the administration of justice in the requesting State of origin. The statement and the certificate just mentioned must be worded or translated in accordance with the rule laid down in the second paragraph, sub-paragraph 3.

The authority competent to decide on the request for enforcement shall assess, provided the party concerned so requests at the same time, the amount of the cost of attestation, translation and legalisation referred to in sub-paragraph 3 of the second paragraph. Those costs shall be considered to be costs and expenses of the proceedings.

IV. FREE LEGAL AID

Article 20

In civil and commercial matters, nationals of the Contracting States shall be granted free legal aid in all the other Contracting States, on the same basis as nationals of these States, upon compliance with the legislation of the State where the free legal aid is sought.

In the States where legal aid is provided in administrative matters, the provisions of the preceding paragraph shall also apply to cases brought before the courts or tribunals competent in such matters.

Article 21

In all cases, the certificate or declaration of need must be issued or received by the authorities of the habitual residence of the foreigner, or, if not by them, by the authorities of his current residence. Should the latter authorities not belong to a Contracting State and not receive or issue certificates or declarations of that kind, it will be enough to have a certificate or a declaration issued or received by a diplomatic officer or consular agent of the country to which the foreigner belongs.

If the petitioner does not reside in the country where the request is made, the certificate or declaration of need shall be legalised free of charge by a diplomatic officer or consular agent of the country where the document is to be produced.

Article 22

The authority competent to issue the certificate or receive the declaration of need may obtain information about the financial position of the petitioner from the authorities of the other Contracting States.

The authority responsible for deciding on the application for free legal aid shall retain, within the limits of its powers, the right to verify the certificates, declarations and information given to it and to secure for purposes of further clarification, additional information.

Article 23

When the indigent person concerned is in a country other than that in which the free legal aid is to be sought, his application for legal aid, accompanied by certificates, declarations of need and, where necessary, other supporting documents which would facilitate examination of the application, may be transmitted by the consul of his country to the authority competent to decide on that application, or to the authority designated by the State where the application is to be examined.

The provisions in Article 9, paragraphs 2, 3 and 4, and in Articles 10 and 12 above, concerning Letters of Request, shall apply to the transmission of applications for free legal aid, and their annexes.

Article 24

If the benefit of legal aid has been granted to a national of one of the Contracting States, service of documents relating to his case in another Contracting State, regardless of the method to which it is to be effected, shall not give rise to any reimbursement of costs by the State of origin to the State addressed.

The same shall apply to Letters of Request, with the exception of the fees paid to experts.

V. FREE ISSUE OF EXTRACTS FROM CIVIL STATUS RECORDS

Article 25

Indigent persons who are nationals of one of the Contracting States may obtain on the same terms as nationals of the State concerned extracts from civil status records, without charge. The documents necessary for their marriage shall be legalised without cost by the diplomatic officers or consular agents of the Contracting States.

VI. PHYSICAL DETENTION

Article 26

Physical detention, either as a means of enforcement, or as a merely precautionary measure, shall not, in civil or commercial matters, be employed against foreigners, belonging to one of the Contracting States, in circumstances where it cannot be employed against nationals of the country concerned. A fact, which may be invoked by a national domiciled in such a country, to obtain release from physical detention, may be invoked with the same effect by a national of a Contracting State, even if the fact occurred abroad.

VII. FINAL CLAUSES

Article 27

This Convention shall be open for signature by the States represented at the Seventh Session of the Conference on Private International Law.

It shall be ratified and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

A record shall be made of every deposit of instruments of ratification, and a certified copy of that record shall be sent through diplomatic channels to each of the signatory States.

Article 28

This Convention shall enter into force on the sixtieth day after the deposit of the fourth instrument of ratification as provided in the second paragraph of Article 27.

For each signatory State subsequently ratifying the Convention, it shall enter into force on the sixtieth day after the day of deposit of its instrument of ratification.

Article 29

The present Convention shall replace, in relations between the States which have ratified it, the Convention on Civil Procedure signed at The Hague on 17th July 1905.

Article 30

The present Convention shall apply by law in the metropolitan territories of the Contracting States.

If a Contracting State desires it to be put into force in all or certain of the other territories, for the international relations of which it is responsible, it shall give notice of its intention to that effect in a document which shall be deposited with the Netherlands Ministry of Foreign Affairs. The latter shall send, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention shall enter into force in relations between the States which have not raised an objection in the six months following that communication and the territory or territories for the international relations of which the State in question is responsible, and in respect of which the said notice has been given.

Article 31

Any State not represented at the Seventh Session of the Conference may accede to the present Convention, unless a State or several States which have ratified the Convention object, within a period of six months from the date of the notification by the Netherlands Government of that accession. Accession shall be by the method indicated in the second paragraph of Article 27.

It is understood that the accessions shall not be able to take place until after the entry into force of the present Convention, by virtue of the first paragraph of Article 28.

Article 32

Each Contracting State, on signing or ratifying this Convention or on acceding to it, may reserve the right to limit the application of Article 17 to the nationals of Contracting States having their habitual residence in its territory.

A State availing itself of the right mentioned in the preceding paragraph shall be able to claim application of Article 17 by the other Contracting States only on behalf of its nationals who have their habitual residence within the territory of the Contracting State before the court of which they are plaintiffs or intervening parties.

Article 33

The present Convention shall remain in force for five years from the date indicated in the first paragraph of Article 28 of the Convention.

This period shall start to run as from that date, even for States which shall have ratified it or acceded to it subsequently.

The Convention shall be renewed tacitly every five years, unless denounced. Denunciation must, at least six months before expiry of the period, be notified to the Ministry of Foreign Affairs of the Netherlands, which shall inform all the other Contracting States of it.

The denunciation may be limited to the territories or to certain of the territories indicated in a notification, given in accordance with the second paragraph of Article 30.

The denunciation shall only take effect in respect of the State which has notified it. The Convention shall remain in force for the other Contracting States.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Convention.

Done at The Hague, on the first day of March, 1954, in a single copy, which shall be deposited in the archives of the Government of the Netherlands and of which a certified copy shall be sent through diplomatic channels to each of the States represented at the Seventh Session of the Hague Conference on Private International Law.