

N° 238.

ALLEMAGNE ET DANEMARK

Convention relative au transfert de
l'administration judiciaire dans les
territoires du Slesvig du Nord,
signée à Copenhague, le 12 juillet
1921.

GERMANY AND DENMARK

agreement regarding the transfer of
the administration of justice in the
territories of northern Slesvig,
signed at Copenhagen, July 12,
1921.

TEXTE DANOIS. — DANISH TEXT.¹N^o 238.

German and Danish official texts communicated by the Danish Ministry for Foreign Affairs. The registration of this Convention took place January 28th, 1922.

Hans Majestaet Kongen af Danmark og Island og den tyske Regering er - ledet af Ønsket om, i de paagaeldende Befolkningers Interesse, saavidt gørligt at lette den videre Behandling af Rets-sager og andre Forhold af retlig Natur, for hvilke Afstaaelsen af visse Landsdele til Danmark har Betydning - kommet overens om at traeffe Aftaler herom og har i dette Øjemed udnaevnt til deres Befuldmaegtigede :

Hans Majestaet Kongen af Danmark og Island : Sin Udenrigsminister, Hans Excellence Kam-merherre Harald Roger Scavenius.

Den tyske Regering : Herr Baron Constantin von Neurath, Det tyske Riges overordentlige Gesandt og befuldmaegtigede Minister ved det kgl. danske Hof.

Efter at de Befuldmaegtigede har meddelt hinanden deres Fuldmagter og befundet disse i god og behørig Form, er de blevet enige om følgende Bestemmelser :

Artikel I.

BORGERLIGE RETSTRAETTER.

§ 1.

Borgerlige Retstraetter, som paa det Tidspunkt, da Retsplejen gik over, var tingfaestede ved Amsretterne i Haderslev, Rødding, Toftlund, Løgumkloster, Aabenraa, Nordborg, Sønderborg, Tønder, Leck og Flensborg, eller ved Landsretten i Flensborg, som første Instans, og som ved denne Traktats Ikrafttraeden endnu ikke er endelig afgjorte, skal, saafremt intet andet følger af Bestemmelserne i §§ 2 og 3, føres videre ved den Ret, ved hvilken Sagen er tingfaestet eller hvis denne Ret er bortfaldet, da ved preussiske eller danske Ret, der er traadt i sammes Sted.

§ 2.

Er Staevning udtaget til en Ret, der ifølge Loven var undtaget og obligatorisk Værneting for Sagen, og saafremt — hvis Staevning var bleven udtaget ved denne Traktats Ikrafttraeden —

¹ The exchange of ratifications took place at Copenhagen on January 17, 1922.

¹ TRANSLATION.

No. 238. — AGREEMENT BETWEEN GERMANY AND DENMARK REGARDING THE TRANSFER OF THE ADMINISTRATION OF JUSTICE IN THE TERRITORIES OF NORTHERN SLESVIG, SIGNED AT COPENHAGEN, JULY 12, 1921.

The GERMAN GOVERNMENT and HIS MAJESTY, THE KING OF DENMARK AND ICELAND, desiring to facilitate, as far as possible, in the interest of the inhabitants concerned, the continuation of legal business affected by the cession of territory to Denmark, have decided to conclude an agreement on the matter and for this purpose have appointed as their Plenipotentiaries :

For the GERMAN GOVERNMENT :

Baron Constantin VON NEURATH, Ambassador Extraordinary and Minister Plenipotentiary to the Royal Court of Denmark.

For HIS MAJESTY THE KING OF DENMARK AND ICELAND :

His Excellency Harald Roger SCAVENIUS, Chamberlain, His Majesty's Minister for Foreign Affairs.

The Plenipotentiaries, after communicating their full powers which were found in good and due form, agreed to the following provisions :

Article 1.

CIVIL ACTIONS.

Paragraph 1.

The hearing of civil actions which at the time of the transfer of legal jurisdiction were pending in the district Courts of Hadersleben, Rödning, Toftlund, Lügumkloster, Apenrade, Norburg, Sonderburg, Tondern, Leck and Flensburg, as well as in the Flensburg Provincial Court of the first instance shall, unless otherwise provided for in paragraphs 2 and 3, be continued before the Court in which they were pending or, where such Court no longer exists, before the Prussian or Danish Court which has taken its place.

Paragraph 2.

If the action was originally brought in a Court which had exclusive jurisdiction over the case, and if, had the action been brought at the time of the coming into force of the present Agreement, a Court of the other State would have exclusive jurisdiction over the case, this action must be transferred to that Court.

¹ Translated by the Secretariat of the League of Nations.

Paragraph 3.

(1) When a case does not come under the exclusive jurisdiction of a particular Court, the following provisions shall apply :

(2) Upon application being made by both parties, the case shall be transferred to that Court of the other State which is named in the application.

(3) If there is a Court in the other State which would have been competent to deal with the case if proceedings had been instituted at the time of the coming into force of this Agreement, either Party may request that the case be transferred to such Court. Such request shall be complied with unless the Court specified in paragraph 1 is also competent at that moment and the opposing party objects to the transfer. If there are several Courts in the other State having jurisdiction, the party making the application shall have the right to choose the Court, or, if both parties apply for a transfer, the defendant shall have this right.

Paragraph 4.

(1) The transfer of cases may be decided without oral proceedings. The parties are to be heard before the decision.

(2) In the cases provided for in paragraph 3, a joint application shall be made by several of the parties to the dispute, not later than the first law term during which the case is dealt with after the coming into force of the present Agreement.

(3) No appeal may be made against the order for transfer. On the announcement or issue of this order the case shall be regarded as pending before the Court mentioned therein, and this order shall be binding on that Court.

(4) The cost of the proceedings in the Court in which the case was begun shall be reckoned as part of the costs accruing in the Court mentioned in the order for transfer. No fees shall be charged in connection with the proceedings and decision regarding the transfer of the case, unless the Court which tries the case rejects the plaintiff's claim as inadmissible.

Paragraph 5.

(1) The provisions of paragraphs 1 to 4 shall apply to all actions which, before the date of transfer of the judicial administration were pending before one of the Courts referred to in paragraph 1 if they are pending before a Court of Appeal at the time of the coming into force of the present Agreement.

(2) Cases shall be referred back to the Courts determined by the application of paragraphs 1 to 4.

(3) In the cases referred to under paragraph 3, to provide for the event of the suit being referred back to a Court of first instance, application for its transfer may be made at any time before the close of the oral proceedings on which judgment is passed.

Paragraph 6.

(1) Should any judgment passed before the coming into force of the present Agreement, in a suit falling under the provisions of paragraph 1, be appealed against after the coming into force of this Agreement, the proceedings and decision as to the legal remedy shall rest with the Court in the district in which the Court appealed from is situated at the time of the coming into force of this Agreement. The provisions of paragraphs 2 to 5 shall apply.

(2) The same provisions apply when, after the coming into force of this Agreement an appeal for rehearing is made from a judgment given before this Agreement comes into force.

Paragraph 7.

The provisions of paragraphs 1 to 6 shall apply in the final settlement of complaints.

Paragraph 8.

(1) The provisions for pending cases shall also apply in all matters requiring public notice or registration which come within the terms of paragraph 1. As regards appeals which have been entered after the coming into force of this Agreement the provisions of paragraph 6 shall apply.

(2) In proceedings on the application for the declaration of the death of a person who, if still alive, would at the time of the coming into force of this Agreement have been a German national, the proceedings shall be continued before the District Court of Flensburg, if the Court in which the case is pending is situated in the ceded territory. If the aforementioned person would have been a Danish national the case shall be continued before the Court to be determined by the Danish judicial authorities if the Court in which the case is pending is situated in the German Empire.

Paragraph 9.

Bankruptcy proceedings to which the conditions defined in paragraph 1 apply shall be continued before the Court in which they are pending or, if such Court no longer exists, by the Prussian or Danish Court which has taken its place.

If proceedings have been instituted after the coming into force of the present Agreement, and if only one Court is competent in the other State, the proceedings shall be handed over to this Court.

Paragraph 10.

Measures of execution, to which the conditions defined in paragraph 1 apply shall, so far as they affect immovable property, be continued by the Court of the State in whose district the property is situated, and in all other cases by the Court competent to order execution after the coming into force of the present Agreement. In so far as the Court which decides the case is competent to deal with disputes relating to execution the provisions of paragraph 6 shall apply.

Paragraph 11.

(1) Any judgment given by a German Court prior to the transfer of the administration of justice, which has become executory before the transfer or which, failing the lodging of an appeal or in consequence of the withdrawal of an appeal, shall become or has become executory after the transfer, shall be considered executory in the ceded territory. No order for execution shall be required for its enforcement. The warrant for execution required in accordance with paragraph 17 of the Danish Law of June 18, 1920 regarding the introduction of the Danish judicial administration into the Districts of Southern Jutland, taken in conjunction with paragraph 479, Section 1 of the Danish Law on Legal Administration, shall be issued without further formalities in all cases where the legal validity of the judgment is duly attested. Similarly, judgments given in the ceded territory shall be regarded as executory and be carried out in the German Empire. In so far as judgments given in the ceded territory require an executory warrant to become enforceable in the German Empire, such clause shall be issued by the District Court at Flensburg.

(2) The provisions of sub-paragraph 1 shall apply wherever possible to decrees and other executory decisions.

Paragraph 12.

The German and Danish Law Courts shall render each other all possible direct legal assistance in all matters arising out of the above paragraph 11. With regard to suing *in forma pauperis*, to the giving of security for the costs of the action, and to payment into Court Germans shall be treated in Danish Courts and Danes in German Courts on the same footing as nationals of the country.

Article 2.

CRIMINAL CASES.

Paragraph 1.

All criminal cases which at the time of the transfer of legal administration were pending in the District Courts of Hadersleben, Rödning, Toftlund, Lügumkloster, Apenrade, Norburg, Sonderbung, Tondern, Leck and Flensburg and in the Flensburg Provincial Court of the first instance which have not been finally disposed of at the time of the coming into force of the present Agreement shall be continued before the Court in which they are pending, or if such Court has ceased to exist before the Prussian or Danish Court which has replaced it.

Paragraph 2.

(1) If criminal proceedings against a German who at the time of the coming into force of the present Agreement is domiciled, or failing such domicile, is habitually resident, in the German Empire are to be taken over by a Danish Court in accordance with the provisions of Paragraph 1, such proceedings shall on application by the accused be transferred to a German Court provided the offence with which the accused is charged can be made the subject of criminal proceedings under German law.

(2) If criminal proceedings against a Dane who, at the time of the coming into force of the present Agreement is resident in Denmark are to be continued before a German Court under the provisions of paragraph 1 such proceedings shall on application by the accused be transferred to a Danish Court provided the offence with which the accused is charged can be made the subject of criminal proceedings under Danish law.

(3) If a prosecution is instituted against Germans and Danes together the case shall be divided in accordance with the above conditions.

(4) The accused must make such application before the opening of the main proceedings. His attention shall be drawn to this rule at the earliest possible date. The Prussian or Danish judicial authorities shall decide upon the Court to which the prosecution shall be transferred.

Paragraph 3.

When any criminal proceedings which before the transfer of the judicial administration were pending in one of the Courts referred to in § 1, are, at the date of the coming into force of this Agreement, pending in the Court of Appeal and have not been finally disposed of, the provision contained in paragraph 1 shall apply. The same procedure shall be applied for settling complaints.

(2) Criminal cases shall be referred back to the courts determined by the application of paragraphs 1 and 2.

In cases coming under paragraph 2 the transfer of the case must be applied for prior to the beginning of the first trial proceedings before the Court to which the matter is referred back. The attention of the accused must be drawn to this provision by the Court of Appeal so that the case may, if necessary, be referred back direct to the Courts of the other State.

Paragraph 4.

(1) When, in the course of criminal proceedings of the nature referred to in § 1, sentences which were pronounced before this Agreement came into force are appealed against after that date, the matter shall be decided by whatever Court is, after the coming into force of this Agreement, the superior Court of the tribunal whose sentence has been appealed against, or of the tribunal which has taken the place of the latter under the provisions of paragraph 1. The provisions of paragraph 2 are applicable in such cases.

(2) If, after the coming into force of this Agreement, application should be made for the reopening of proceedings which were already before the Court at the time of the transfer of the judicial administration and in which final judgment shall have been pronounced before the coming into force of this Agreement, the provisions of § 1 and 2 shall be applicable.

Paragraph 5.

In the case of proceedings in the nature of an enquiry being carried on at the time of the transfer of judicial administration, by the Public Prosecutor (or District Prosecutor), and being still in that stage when this Agreement comes into force, if it should become evident that the case can only be finally dealt with by the Courts of the other State, the proceedings shall be transferred by the Public Prosecutor who is dealing with them to the Public Prosecutor of the other State. The same provisions shall apply in the case of preliminary judicial enquiries of the above kind, as soon as it becomes apparent that the matter could only be dealt with finally by the Courts of the other State, if the public prosecution had been instituted after the coming into force of this Agreement.

Paragraph 6.

In case a criminal prosecution, coming under the terms of this Treaty, cannot be proceeded with by the State which is competent to undertake it, in accordance with these provisions, owing to the fact that the accused is residing in the other State and is a national of that State, the latter State shall be bound, on application by the former, to undertake the prosecution, provided that the act alleged can also be the subject of criminal proceedings under the laws of the State to which application is made. The authorities who are to prosecute and the Court which is to try the case shall be determined by the German or the Danish Department of Justice, as the case may be.

Paragraph 7.

As regards sentences pronounced by the Courts referred to in paragraph 1, and due to be executed at the time of the transfer of judicial administration, and sentences in cases coming under paragraph 3, sub-paragraph 1, which become due to be executed after the transfer, as a result of the rejection of appeals, the execution of such sentences shall be commenced or completed by the executive officers of the Court whose judgment has to be carried out ; or, if that Court has ceased to exist, of the German or Danish Court which has taken its place.

Paragraph 8.

(1) A person under sentence, who comes under the provisions laid down in sub-paragraphs 1 and 2 of paragraph 2, regarding the transfer of criminal prosecutions, may demand that the execution of the sentence be transferred to the penal authorities of the State of which the said person is a national, provided that the punishment consists of detention and has at least six weeks to run at the date on which application is made, and that the act in respect of which the sentence has been pronounced is an offence under the criminal code of the State called on to take over the execution of the sentence.

(2) Application for the transfer of execution must be made before the sentence has begun to run, or if it has already begun, within two weeks after the person under sentence has been informed of his right to make such an application.

(3) As regards persons under sentence, of the category referred to in sub-paragraph 1, the State which is competent under paragraph 7 to execute the sentence may also demand the transfer of the execution, provided that the sentence is one of detention and has at least six months to run at the time the application is made, and providing the offence is one which fulfils the condition laid down in sub-paragraph 1. In such cases, application for the transfer must be made within two months of the coming into force of this Agreement.

(4) The Prussian or Danish Department of Justice, as the case may be, shall decide who are the proper authorities to take over the execution of the sentence.

Paragraph 9.

Combined sentences, the component portions of which have been awarded partly by Courts in the ceded territory and partly by Courts remaining in German territory, shall be executed by the State which, having regard to the total amount of the separate sentences awarded by its own Courts, is responsible for the largest share in the combined sentence ; or, if both States are responsible for an equal share, by the State which has already begun to carry out the sentence. The principles laid down in paragraph 8 apply in such cases.

Paragraph 10.

If a sentence, coming under the terms of this Agreement, cannot be carried out by the State which is competent to execute it because the person sentenced is residing in the other State and is a national of that State, or because his property, in the case of a person sentenced to a fine, is situated in the other State, the latter State shall, on the application of the former, take over the execution of the sentence, provided that the act which has given rise to the sentence is an offence under its own laws. The Prussian or Danish authorities, as the case may be, shall decide who are the proper authorities to carry out the sentence.

Fines shall remain the property of the State which has recovered them.

Paragraph 11.

(1) The right of pardon shall, in all cases, be transferred, together with the right of execution of a sentence, to the State taking over the latter duty.

(2) In no circumstances shall the cost of executing a sentence be refunded.

Paragraph 12.

(1) The German and Danish Public Prosecutors and Courts shall render legal assistance to each other in all matters arising out of this Agreement.

(2) Nevertheless nationals of one State shall not be handed over to the other State for prosecution or punishment ; nor shall witnesses and experts, nationals of one State, be compelled to appear before the authorities of the other State.

Paragraph 13.

Information regarding persons born in the ceded territory shall be given to the Danish judicial and other public authorities, on their application, free of cost, to the extent provided for by the German regulations, from the penal records which are kept by the Public Prosecutor at Flensburg. Notices of sentences which concern persons born in the ceded territory and which Prussia has no further interest in preserving, shall be gradually extracted from the penal records at Flens-

burg, in pursuance of a further agreement to be concluded between the Prussian and Danish judicial authorities, and shall be placed at the disposal of the latter.

Article 3.

VOLUNTARY JURISDICTION.

Paragraph 1.

The provisions of paragraphs 2 to 8 hold good in regard to matters concerning voluntary jurisdiction in the District Court areas which have been wholly or partly ceded to Denmark.

Paragraph 2.

(1) As regards proceedings of a voluntary nature which have not yet been concluded, final judgment will be given by the Court before whom the proceedings are pending, or if that Court has ceased to exist, by the German or Danish Court which has taken its place.

(2) Nevertheless, the Court shall transfer the suit to a Court of the other State in cases in which the latter would be the competent Court if the proceedings had not been instituted before the coming into force of this Agreement. In cases where both a German and a Danish Court would be competent to try the case at that date, the suit shall only be transferred if the person on whose nationality the competence of the Court depends should belong, at that date, to the other State, or if one of the parties to the suit should demand the transfer and all the other parties should agree. The provisions of Article 1 paragraph 4, sub-paragraphs (1), (3) and (4) are applicable in such cases.

Paragraph 3.

(1) Land Registration Offices which possess Land Registers containing entries regarding land situated in the territory of the other State, shall hand over the said Land Registers to the competent Land Registration Offices of the other State.

The date on which a Register is handed over shall be publicly announced.

(2) Official acts which have been undertaken by a Land Registration Office coming under the provisions of sub-paragraph (1), before the coming into force of this Agreement, cannot be challenged on the ground that the Office in question no longer has jurisdiction in the locality owing to the cession of the territory.

(3) The procedure for the handing over of Land Registers shall be governed by special agreements which have been, or will be, concluded on this subject between the Prussian and Danish Departments of Justice.

Paragraph 4.

(1) Court Records shall continue to be kept up by the Courts which have hitherto compiled them.

(2) When, however, at the time of the coming into force of this Agreement, the conditions are such that a Court of the other State would be competent to compile the records, certified extracts from the records shall be handed over to the Court in question. It shall be a matter for agreement between the Prussian and Danish Departments of Justice whether in certain special cases, in lieu of the above procedure, the records themselves may be handed over, certified extracts being retained by the Court which has hitherto compiled them.

(3) The date of the transfer of the records shall be publicly announced.

(4) The provisions of paragraph 3 sub-paragraph (2) are applicable in such cases.

Paragraph 5.

Wills and deeds of settlement shall remain in the possession of the Courts which have taken them into official custody, *i.e.*, in the ceded territory, they shall remain in the possession of the Danish Judicial Authority (Notary Public) who has taken the place of the former District Court. Nevertheless, until June 30, 1922, German testators may demand the transfer of the above documents to a German Court, and Danish testators may demand their transfer to a Danish Judicial Authority.

Paragraph 6.

(1) Court archives shall remain in the custody of the Court which has possession of them, *i.e.*, in the ceded territory they shall remain in the custody of the Danish Judicial Authority who has taken the place of the former District Court.

(2) The same applies in the case of notarial Documents in the custody of the Courts (original documents, registers, deeds, etc.).

Paragraph 7.

Written statements, certified copies and extracts from Court and notarial declarations, including title-deeds, and extracts from testamentary dispositions, are to be communicated, in accordance with the law which has hitherto been in force, by the authorities who have had custody of the documents. The same applies to the exhibition of certificates of all kinds.

Paragraph 8.

(1) The Courts in the districts affected by the rectification of the frontier shall afford each other direct legal assistance to the greatest possible extent, in order to facilitate the transfer of territory. The above applies especially to the issue of certified copies of land registers, registers, and title and settlement deeds.

(2) In the special circumstances created by the transfer of territory, Germans shall be treated as natives of Denmark by the Danish Courts, and vice versa, in regard to questions of suing in *forma pauperis*, and payment into Court (*Vorschusspflicht*).

Article 4.

FINAL PROVISIONS.

Paragraph 1.

(1) Court documents shall be handed over to the Judicial Authority which has to decide the case in question under the provisions of this Agreement.

(2) Documents in the nature of records shall, in the ceded territory, remain in the possession of the Judicial Authority which takes the place of the District Court in whose custody they were at the time of the transfer of judicial administration. In Prussia, they shall remain in the possession of the Judicial Authorities in whose custody they were at the time of the transfer of judicial administration.

(3) Should it occur that proceedings to which the documents relate have to be reopened and dealt with by an authority of the other State, in accordance with the above provisions for the transfer of cases, the documents shall be handed over to the authority concerned.

Paragraph 2

(1) Should it occur, under the provisions of this Agreement, that proceedings which have been commenced are transferred to a Court of the other State, the latter Court shall collect the whole costs of the proceedings; the State which transfers the case shall not be entitled to a refund of the costs incurred up to the time of the transfer.

(2) Similarly, the costs of affording legal assistance as provided in this Agreement, shall not be refunded.

Paragraph 3.

Sentences and judgements which were pronounced in the ceded territory before the transfer of judicial administration, and against which no appeal would be possible under Danish law, can, nevertheless, be made the subject of appeals provided that the latter would be admissible under German law.

Paragraph 4.

In cases where the German or Danish authorities have acted in respect of matters falling within the sphere of this Agreement, but before its coming into force, in accordance with the provisional agreement concluded between Commissioners representing both parties on June 18th, 1920, on the basis of the draft German-Polish Agreement respecting the transfer of judicial administration (Prussian Ministry of Justice Gazette 1919, pp. 643-650) no objection can be lodged against the employment of the above procedure.

Paragraph 5.

The end of the eighteenth day of June, nineteen hundred and twenty, shall be reckoned as the moment of transfer of judicial administration for the purposes of this Agreement.

Paragraph 6.

It shall still be open to the Prussian Department of Justice, acting on behalf of the German Reich, and to the Danish Department of Justice, to come to an agreement in regard to further provisions for the carrying out in detail of the present Agreement, in particular with regard to questions concerning deposits.

Article 5.

(1) The present Agreement shall be ratified, and the Instruments of Ratification shall be exchanged at Copenhagen as early as possible.

(2) The Agreement shall come into force at the end of the fourteenth day after the exchange of the Instruments of Ratification.

(3) In witness whereof the Plenipotentiaries have signed this Agreement, and have thereto affixed their seals.

(4) Done in duplicate at Copenhagen on July 12th, 1921.

(Signed) HARALD SCAVENIUS.

(Signed) FREIHERR VON NEURATH.