

N° 642.

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**BULGARIE ET  
ROYAUME DES SERBES,  
CROATES ET SLOVÈNES**

Convention relative à l'assistance  
judiciaire, signée à Sofia le 26 no-  
vembre 1923.

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**BULGARIA AND  
KINGDOM OF THE SERBS,  
CROATS AND SLOVENES**

Convention relating to legal assis-  
tance, signed at Sofia, November  
26, 1923.

TEXTE SERBE. — SERBIAN TEXT.

No. 642. — КОНВЕНЦИЈА<sup>1</sup> ИЗМЕЂУ КРАЉЕВИНЕ БУГАРСКЕ И КРАЉЕВИНЕ СРБА, ХРВАТА И СЛОВЕНАЦА О СУДСКОЈ ПОМОЋИ, ПОТПИСАНА У СОФИЈИ 26 НОВЕМБРА 1923.

*Bulgarian and Serbian official texts, communicated by the Bulgarian Chargé d'Affaires at Berne.  
The registration of this Convention took place on July 16, 1924.*

КРАЉЕВИНА БУГАРСКА И КРАЉЕВИНА СРБА, ХРВАТА И СЛОВЕНАЦА, желећи да закључе конвенцију о судској помоћи, именовале су својим пуномоћницима :

ЊЕГОВО ВЕЛИЧАНСТВО КРАЉ БУГАРА :

Г. г. Христу КАЛФОВА, Министра Спољних Послова и  
Јосифа ФАДЕНХЕХТА, доктора права, бившег министра правде и професора Софијског универзитета ;

ЊЕГОВО ВЕЛИЧАНСТВО КРАЉ СРБА, ХРВАТА и СЛОВЕНАЦА :

Г. г. Милана РАКИЋА, Пуномоћног Министра и Изванредног Посланика и  
Милету НОВАКОВИЋА, доктора права и редовног професора Београдског универзитета,

који су, пошто су положили њихова пуномоћија за која се утврдило да су пуноважна, закључили следеће :

А. О ПРЕДАЈИ СУДСКИХ И ВАНСУДСКИХ ПИСМЕНА И СУДСКИХ НАЛОГА.

Члан I.

Уговорне стране обавезују се по грађанским и трговачким делима да узајамно предају, преко надлежних власти, позиве или друга писмена и да извршују судске налоге по утврђеном поступку законодавства умољене државе, или на други који особени начин, указан од стране власти која моли, с тим да се не противи законима умољене државе.

Писмена и судски налози састављаће се на званичном језику оне државе која моли.

Сви документи и спроводна писма који се односе на извршење судских налога и на предају судских и вансудских писмена ослобођавају се од овере, али треба да буду снабдевени печатом судске власти која их шаље.

Њихову доставу вршиће непосредно надлежна судска власт државе која тражи надлежној судској власти умољене државе.

Приватни документи и писмена приложена судском налогу и позиву не подлеже поновном плаћању таксе у умољеној држави.

Одредбе овога члана не одузимају право уговорним странама да непосредно преко својих дипломатских или консуларних представника извршују саопштења упућена држављанима државе која тражи, али да то не буде принудним начином.

<sup>1</sup> The exchange of ratifications took place July 8, 1924.

<sup>1</sup> TRANSLATION.

No. 642. — CONVENTION RELATING TO LEGAL ASSISTANCE CONCLUDED BETWEEN THE KINGDOM OF BULGARIA AND THE KINGDOM OF THE SERBS, CROATS AND SLOVENES, SIGNED AT SOFIA, NOVEMBER 26, 1923.

THE KINGDOM OF BULGARIA and THE KINGDOM OF THE SERBS, CROATS AND SLOVENES, being desirous of concluding a Convention relating to legal assistance, have appointed for this purpose as their plenipotentiaries :

HIS MAJESTY THE KING OF THE BULGARIANS :

M. Christo KALFOFF, Minister for Foreign Affairs, and new line M. Joseph FADENHECHT, Doctor of Law, former Minister of Justice and Professor at the University of Sofia ;

HIS MAJESTY THE KING OF THE SERBS, CROATS AND SLOVENES :

M. Milan RAKITCH, Minister Plenipotentiary and Envoy Extraordinary, and M. Mileta NOVAKOVITCH, Doctor of Law, and Professor at the University of Belgrade,

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

A. TRANSMISSION OF JUDICIAL AND EXTRA-JUDICIAL DOCUMENTS AND COMMISSIONS TO EXAMINE WITNESSES.

*Article I.*

The Contracting Parties reciprocally undertake, in civil and commercial cases, through the intermediary of the competent authorities, to cause summonses or other documents to be served and commissions to examine witnesses to be executed in the form prescribed by the laws of the State to which application is made or in a special form demanded by the authority making application, provided that such form is not in contravention of the laws of the State to which application is made.

These documents and commissions to examine witnesses shall be drawn up in the official language of the State to which application is made.

All documents and covering letters concerning the execution of commissions to examine witnesses and the service of judicial and extra-judicial documents shall be exempt from the necessity for legalisation and shall bear the seal of the legal authority delivering them.

They shall be transmitted direct by the competent legal authority of the State making application to the competent legal authority of the State to which application is made.

Additional fees shall not be levied, in the State to which application is made, in respect of private documents and papers accompanying a commission to examine witnesses or a summons.

The provisions of the present article shall not affect the right of the Contracting Parties to cause process to be served direct, though without constraint, through their diplomatic agents or consular officials, on nationals of the State making application.

<sup>1</sup> Translated by the Secretariat of the League of Nations.

*Article 2.*

A State may only refuse to effect service of process within its territory, as provided for in Article 1, if it considers that its sovereign rights would be infringed or its security endangered thereby.

Proof of service shall be furnished either by a duly dated and legalised receipt given by the addressee or by an attestation of the authority of the State to which application is made testifying to the circumstances, form and date of service.

If the document to be served is transmitted in duplicate, the receipt or attestation should be given on one of the copies or be attached thereto.

*Article 3.*

The legal authority to which a commission to examine witnesses, as provided for in Article 1, is addressed, shall be required to execute it and to use the same means of constraint for that purpose as when executing a commission of the authorities of the State to which application is made, or when giving effect to a request of that nature presented by one of the parties concerned. Such means of constraint shall not necessarily be employed if the object in view is to secure the attendance of the parties to the suit.

The authority making application shall, if it so requests, be informed of the date and place of execution of the measures demanded, so that the party concerned may be able to attend.

Execution of the commission to examine witnesses can only be refused :

- (1) If the authenticity of the document is not proved ;
- (2) If, in the State to which application is made, the execution of the commission does not lie within the competence of the legal authorities ;
- (3) If the State on whose territory execution is to take place considers that its sovereign rights would be infringed, or its security endangered thereby.

Should the authority to which application is made not be competent to deal with the matter, the commission shall be transmitted *ex officio* to the competent legal authority of the same State, in conformity with the laws of such State.

In all cases in which the commission is not executed by the authority to which application is made, such authority shall immediately notify to that effect the authority making application, indicating, in the case of sub-paragraph 3, the reasons for which the execution of the commission has been refused, and, in the case of the preceding sub-paragraph, the authority to which the commission has been transmitted.

*Article 4.*

Summonses, extracts from dossiers, the depositions and evidence of witnesses, reports of experts, records of judicial proceedings, and, generally, any documents relating to civil or commercial cases, furnished at the request of one of the Contracting Parties on the territory of the other Party, shall be written on unstamped paper and delivered free of charge.

The costs in connection with the serving of summonses and other legal documents and with the execution of commissions to examine witnesses shall be borne by the State to which application is made.

The provision contained in the first sub-paragraph only applies to fees which are regularly levied and does not cover the compensation of witnesses and experts or the fees paid to officials in all cases in which the law requires that they should take part in the execution of the desired measures. These costs shall be borne by the parties to the suit, and shall be collected in conformity with the law of the State on whose territory execution has taken place.

The costs referred to in the preceding sub-paragraph shall, however, be borne by the State making application if the parties to the suit are unable to pay them.

## B. RIGHT OF ACCESS TO THE COURTS. « JUDICATUM SOLVI » SURETY.

*Article 5.*

The nationals of each of the Contracting Parties shall have free and ready access to the Courts of the other Contracting Party and shall be authorised to use them on the same terms and in the same manner as the nationals of the country concerned. More particularly, the nationals of one of the Contracting Parties who are domiciled in the territory of one of the said Parties and are bringing an action in the Courts of the other, shall not be required to give any surety or make any deposit under whatsoever designation, by reason either of their being foreigners or of their not possessing a domicile or a residence in the country.

*Article 6.*

Orders to pay the costs of an action made by the Courts of one of the Contracting Parties against a plaintiff who has been exempted from giving a surety or making a deposit in virtue either of Article 5 or of the law of the State in which the action was brought, shall, upon an application being submitted through the diplomatic channel, be made executory free of charge, by the competent authority of the other Contracting Party, in conformity with the laws of that country.

*Article 7.*

Decisions regarding costs shall be made executory without the parties being heard but subject to the subsequent right of appeal of the unsuccessful party in accordance with the laws of the country where execution is carried out.

The competent authority for hearing applications for execution shall restrict itself to considering :

(1) whether, according to the laws of the country where the order was made, the document containing the decision fulfils the required conditions in respect of authenticity ;

(2) whether, according to the same law, the decision has acquired the force of law.

To meet the requirements prescribed in the preceding sub-paragraphs (1 and 2) it will be sufficient if the competent authority of the State making application attests that the decision has acquired the force of law, and that no ordinary appeal against it is any longer possible.

## C. FREE LEGAL ASSISTANCE TO THE POOR.

*Article 8.*

Poor nationals of both Contracting Parties shall, in the territories of the other Contracting Party, be entitled to free legal assistance in the same way as the nationals of that State, provided that they conform to the laws of the State in which free legal assistance is claimed.

*Article 9.*

In all cases the certificate or declaration of poverty is issued or received by the authorities of the State in which the applicant's habitual residence is situated, or, in default of such residence,

by the authorities of the State in which he is residing for the time being. Should the applicant not be resident in the territory of either of the Contracting Parties and should the authorities of his country of residence not issue or receive certificates or declarations of this kind, it will be sufficient if a certificate or declaration is issued or received by a diplomatic agent or consular official of the country to which the applicant belongs.

*Article 10.*

The authority competent to issue or receive the certificate or declaration of poverty may make enquiries of the authorities of the other Contracting Party regarding the financial position of the applicant.

The authority appointed to deal with the application for free legal assistance shall be entitled, within the limits of its competence, to verify the certificates, declarations and information submitted to it.

D. EXECUTION OF JUDGMENTS AND JUDICIAL COMPROMISES IN CIVIL AND COMMERCIAL CASES.

*Article 11.*

In contentious and non-contentious cases, the judgments, orders for payment, and other decisions of the civil and commercial courts of either of the Contracting Parties, together with compromises agreed to in such courts, shall be executory in the territory of the other Contracting Party in accordance with the stipulations hereinafter set forth.

The Bulgarian "execution certificates" issued by the Bulgarian courts in respect of bills of exchange, in accordance with Article 14 of the law on compulsory execution published in the Official Journal No. 277, 1897, shall have the force of orders for payment in the territory of the Kingdom of the Serbs, Croats and Slovenes.

*Article 12.*

Execution shall not be granted in cases relating to property or other realty rights in respect of buildings situated in the State to which application for execution is made.

*Article 13.*

Execution shall not be granted in cases in which it would serve to establish a legal relationship or a claim, which the law of the place of execution does not, for reasons of public order and morality, recognise as valid or operative.

*Article 14.*

Execution on the basis of a legal decision shall only take place on the following conditions :

(1) If the court which gave judgment on the case is to be regarded as competent under Article 15 of the present Convention.

(2) If the decision has acquired the force of law and no ordinary appeal against it is any longer possible.

*Article 15.*

The competence of the court which gave judgment on the case shall be considered established within the meaning of Article 14, (1), if, according to the laws of the State to which application is made, the case was one which could be brought before a court of the other Contracting Party.

Competence will always be considered as established in the following cases :

(1) Claims made by the holder of a bill of exchange or a cheque against an obligor under the said bill of exchange or cheque, in respect of which judgment has been pronounced by the court of the place which, according to the laws of such court, is considered to be the place of payment ;

(2) If, on a counter-claim, the court in which the original claim was pending pronounced judgment in accordance with the laws ordinarily applied by itself ;

(3) If, the parties to the suit are traders and if judgment has been pronounced in respect of an application for the execution or cancellation of a contract or for damages for non-execution or incomplete execution by the court of the place where the contract is to be executed.

(4) If the parties had mutually agreed beforehand to recognise the competence of the court which gave judgment on the case.

#### Article 16.

Execution on the basis of a judicial compromise shall only take place when such compromise is executory under the laws of the place where it was agreed to.

#### Article 17.

Execution shall not be granted, even in cases in which the conditions laid down in Articles 11 to 16 have been fulfilled, if the obligor opposes execution on one of the following grounds :

(1) that the claim was not properly served on the defendant, and that, on that account, he did not take part in the proceedings on which the decision was based ;

(2) that, on account of some other irregularity of procedure, the party against whom execution is to be carried out was prevented from taking part in the proceedings ;

(3) that, according to the law of the place where the decision was given or the compromise agreed to, such decision or compromise has ceased to be executory ;

(4) that, according to the law of the place of execution, the *exceptio rei judicatae* bars the claim in respect of which execution is to take place.

Service shall only be considered to be in due form within the meaning of (1) if the claim was served on the defendant in person or on an agent authorised by him to accept service. In the territory of the Contracting Party whose courts have dealt with the question of execution, service must have been effected through judicial channels or as provided for in the last paragraph of Article 1.

#### Article 18.

An application for execution made by a court or by one of the parties to the suit must be accompanied by the following documents :

(1) A copy of the judicial decision together with details as to the grounds on which it was based, or a copy of the judicial compromise.

(2) An official declaration certifying that the decision or judicial compromise has acquired the force of law and that no ordinary appeal against it is any longer possible.

If the application for execution is communicated by a court, it will be forwarded direct to the court of the State where execution is to take place.

If a party to the suit forwards the application for execution direct to the court of the State where the execution of a decision or of a judicial compromise is to be carried out, the documents

specified under Nos. 1 and 2 of this article must be legalised by the Central Judicial Administration of the State from which they emanate.

*Article 19.*

The competent authority of the State to which application is made shall decide whether execution should be granted without hearing the obligor. Execution will be granted if the conditions laid down in Articles 11 to 16 have been fulfilled and the court will not, on its own motion, consider whether execution should be refused for the reasons specified in Article 17. The Court to which application is made shall not be entitled to go into the merits of the case.

If necessary, the court to which application is made may ask for explanations from the court which gave the decision in respect of which execution is applied for or from the court applying for execution.

*Article 20.*

When the application for execution is made by a court, the authority carrying out execution shall appoint a representative for the plaintiff and shall advise the court making application accordingly. The costs arising from the appointing of the representative shall be borne by the court applying for execution.

*Article 21.*

If execution is granted, the necessary steps for carrying it out shall be taken immediately *ex officio*. The obligor shall be entitled, apart from any right of appeal granted by the laws of the country, to oppose execution by claiming that one of the conditions laid down in Articles 11 to 16 has not been fulfilled or by pleading one of the grounds set forth in Article 17. Except in the cases provided for in Article 13 and under Nos. 3 and 4 of Article 17, the grounds on which execution is opposed must be pleaded within two weeks after the order for execution has been served.

The court which is competent according to the laws of the country will adjudicate on the application of the obligor.

If the obligor has opposed execution, he may apply for an order to the effect that, pending the court's decision, no steps be taken in connection with execution beyond such as are necessary to ensure recovery.

*Article 22.*

Except as otherwise provided in this Convention, execution shall be carried out in accordance with the laws of the State to which application is made.

*Article 23.*

When execution is refused by reason of the required conditions not having been fulfilled, the plaintiff shall be entitled to appeal.

The application for execution, however, may be renewed by the court or by the party concerned if the conditions laid down in the present Convention have subsequently been fulfilled.

*Article 24.*

The legal expenses arising out of the execution of decisions and judicial compromises shall be borne by the parties to the suit and shall be paid in accordance with the laws in force in the country where execution takes place. If necessary, they shall be advanced by the State to which application is made.



If repayment of the said expenses cannot be obtained from the parties, they will be borne by the State making application.

Charges payable at the time of execution shall be fixed according to the laws of the country where execution is to be carried out. Execution may not, however, be delayed on account of the non-payment of such charges.

*Article 25.*

Decisions given and compromises agreed to in the territory of one of the Contracting Parties shall have the same force and effect in the territory of the other Contracting Party as decisions and compromises given or agreed to in the latter country, provided that execution is permissible in that country under the terms of the present Convention.

*Article 26.*

Bodily constraint, either as a means of execution or simply as a measure of precaution, may not, in civil or commercial cases, be employed in respect of foreigners who are nationals of one of the Contracting Parties, if it could not be so employed in respect of nationals of the country concerned. A circumstance which may be pleaded by a national domiciled in the country, in order to secure the removal of bodily constraint, shall be productive of the same effect in favour of a national of the other Contracting Party, even if such circumstance occurred abroad.

E. BANKRUPTCY.

*Article 27.*

If bankruptcy proceedings are instituted in the territory of one of the Contracting Parties and the bankrupt possesses movable property in the territory of the other Contracting Party, although not resident there, provision shall be made, if the Court trying the case so requests, for the safe-keeping of the said property, its inventorying and its transfer to the Court in question.

As from the day when the competent Court receives an application for provision to be made for ensuring the safe-keeping or transfer of the said property, the estate liable to transfer may no longer be legally pledged as security. Transfer to the Court trying the case will not take place if claims to the possession, restitution or retention of the said property are put forward or liens, pledges or other realty rights constituted before the above-mentioned date in respect thereof are claimed before or after such date. The same holds good when the division of such property is demanded, especially in the case of an inheritance. In such cases only the balance of the property remaining after the said claims have been fully satisfied shall be handed over to the Court trying the case.

Money claims, even if secured on immovable property, shall be considered as forming part of the bankrupt's movable estate.

*Article 28.*

The question as to the measures to be taken in respect of the movable property which, in accordance with the preceding article, is not to be transferred, and in respect of all the immovable property of a bankrupt, shall in all cases be within the competence of the Courts of the State in whose territory such property is situated.

If the property in question is subjected to forced sale in the said State, any surplus resulting from the sale, after the claims of the lawful creditors have been met, shall be handed over, in accordance with the provisions of the preceding article, to the Court before which the bankruptcy proceedings are pending.

*Article 29.*

In bankruptcy proceedings instituted in the territory of one of the Contracting Parties, the creditors who are nationals of the other Contracting Party shall be treated in exactly the same manner as creditors who are nationals of the country concerned.

When, on bankruptcy proceedings being instituted, there are believed to be creditors in the territory of the other Contracting Party, notice of such proceedings shall be published in the Official Journal of the other State, in accordance with the regulations in force in that State.

## F. FINAL PROVISIONS.

*Article 30.*

The present Convention shall come into force on the day of the exchange of ratifications and shall remain in force until the expiration of one year from the day on which one or the other of the Contracting Parties denounces it.

In faith whereof, the respective plenipotentiaries have set their signatures and affixed their seals hereto.

Done in duplicate, at Sofia, on the 26th day of November, 1923, in the Serbian and Bulgarian languages.

(L. S.) (Signed) M. M. RAKITCH.

(L. S.) (Signed) DR. MILETA NOVAKOVITCH.

(L. S.) (Signed) CHR. KALFOFF.

(L. S.) (Signed) DR. J. FADENHECHT.

## ANNEX.

With a view to facilitating the settlement of civil or commercial actions pending in the Bulgarian Courts, the parties to which are former Bulgarian nationals, who, by virtue of the Treaty of Neuilly, have become nationals of the Kingdom of the Serbs, Croats and Slovenes, the Contracting Parties have agreed as follows :

Actions pending in the Bulgarian Courts shall be decided by these Courts ; the parties to the suit will be summoned according to the rules established by the Convention relating to legal assistance.

In the same way summonses to the Courts of Appeal will be served separately, apart from publication in the Official Journal.

The decisions of the Bulgarian Courts in respect of these actions will be executory in the territory of the Kingdom of the Serbs, Croats and Slovenes within the limits prescribed by the Convention relating to judicial assistance.

Done in duplicate, at Sofia, on the 26th day of November, 1923, in the Serbian and Bulgarian languages.

(L. S.) (Signed) M. M. RAKITCH.

(L. S.) (Signed) DR. MILETA NOVAKOVITCH.

(L. S.) (Signed) CHR. KALFOFF.

(L. S.) (Signed) DR. J. FADENHECHT.