

HCCH Convention of 25 October 1980 on International Access to Justice

The Access to Justice Convention is intended to facilitate, for any nationals of a State Party to the Convention or persons habitually resident in a State Party, access to justice in all the States Parties to the Convention¹. The Convention's purpose is not to harmonise domestic laws, but rather to *ensure that the mere status as an alien or the absence of residence or domicile in a State are not grounds for discrimination with regard to access to justice in that State*.

The Access to Justice Convention, seen as a supplement to the "Service"² and "Evidence"³ Conventions, provides in relations between States Parties for non-discrimination with respect to *legal aid* including the provision of legal advice, *security for costs, copies of entries and decisions, and physical detention and safe-conduct*. The three Conventions combined accordingly cover all the main international aspects relating to cooperation in civil and commercial proceedings, as covered by the *Convention of 1 March 1954 on Civil Procedure* that they were intended to replace.

Legal aid

The Convention establishes in particular:

1. the entitlement of nationals of any Contracting State, and of persons having, or formally having had, their habitual residence in a Contracting State regardless of nationality, to legal aid in each of the Contracting States, on the same conditions as if they were themselves nationals of and habitually resident in that State (Art. 1);
2. the entitlement of all such persons to legal advice, provided that they are present in the Contracting State where advice is sought (Art. 2);
3. the entitlement of all such persons, when pursuing their proceedings in any other Contracting States, to free service of documents, Letters of Request and social enquiry reports, and to legal aid to secure the recognition and enforcement of the decision obtained (Art. 13);
4. an expeditious and economical method for transmission between Contracting States of applications for legal aid, in particular by means of a forwarding authority which is required to assist the applicant and a receiving Central Authority which shall determine or obtain a determination upon the application. The use of a standard form allows a speedy and uniform processing of applications.

Security for costs and enforceability of orders for costs

The Convention also provides for:

1. an extension of the benefit of exemption of security required of plaintiffs or parties by reason only of their foreign nationality or of their not being domiciled or resident in the Contracting State in which proceedings are commenced, to all individuals or legal

¹ A comprehensive and updated list of Contracting States to the Convention is available on the HCCH website at < www.hcch.net >.

² *HCCH Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (Service Convention).

³ *HCCH Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention).

- entities having their habitual residence in another Contracting State; and in return for this benefit,
2. a speedy and economical procedure, similar to that mentioned *supra* (4), for orders for costs issued in one Contracting State against any party exempted from providing a security under the Convention to be rendered enforceable free of charge in any other Contracting State.

Copies of entries and decisions

The Convention grants nationals of a Contracting State and persons having their habitual residence in a Contracting State a right to obtain copies of or extracts from entries in public registers and court decisions in any other Contracting State, on the same terms and conditions as its nationals.

Physical detention and safe-conduct

Again in order to avoid discrimination against any person having the nationality of or habitually resident in another Contracting State, the Convention:

1. prohibits the application against such a person of arrest and detention in civil or commercial matters, either as a means of enforcement or simply as a precautionary measure, in circumstances where they cannot be applied against nationals;
2. provides that such a person, when summoned by name by a court or tribunal or by a party with the leave of a court or tribunal, to appear as a witness or expert in proceedings before the courts or tribunals of another Contracting State, may not, for a limited period, be prosecuted, detained or subjected to any other restriction in his or her personal liberty on the territory of that State in respect of any act or conviction occurring before his or her arrival in that State.

It is to be noted that the Access to Justice Convention allows States Parties to reserve the right to exclude the application of certain provisions of the Convention, subject to conditions (Art. 28).

Many items of information relating to the Convention, such as its full text and full status, are available on the HCCH website at <www.hcch.net> or contact the Permanent Bureau of the HCCH.