

**LA RELATION ENTRE LE PROJET SUR LES JUGEMENTS ET CERTAINS
INSTRUMENTS RÉGIONAUX DANS LE CADRE DE LA
COMMUNAUTÉ D'ÉTATS INDÉPENDANTS**

préparé par Eleonora Gerasimchuk pour le Bureau Permanent

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**THE RELATIONSHIP BETWEEN THE JUDGMENTS PROJECT AND CERTAIN
REGIONAL INSTRUMENTS IN THE ARENA OF THE
COMMONWEALTH OF INDEPENDENT STATES**

prepared by Eleonora Gerasimchuk for the Permanent Bureau

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en matière civile et commerciale*

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in Civil and Commercial Matters*

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I. INTRODUCTION

During its meeting in April 2004, the Special Commission on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters discussed the possible final clauses of a preliminary draft Hague Convention on Choice of Court Agreements in B2B cases, including the clauses on its relationship with other international instruments. Following the proposals submitted during the meeting, discussions focussed in particular on the so-called European instruments¹ and possibilities to resolve their overlap with the preliminary draft Hague Convention on Choice of Court Agreements by inserting a "disconnection clause" into the latter. In this context it was stressed that the European instruments were not the only regional instruments likely to overlap and that there were other regions which had adopted private international law instruments that could overlap with a Hague Convention on Choice of Court Agreements. The Permanent Bureau was asked to carry out further research on those conventions.²

This paper addresses the issue with regard to conventions existing in the arena of the former republics of the USSR, currently Member States of the Commonwealth of Independent States (CIS).³ Several Conventions in the CIS arena have been examined in order to identify a possible overlap or even conflict with the Hague Judgments Convention. They are presented in the following order: A first group comprises specific Treaties on (jurisdiction and) the recognition and enforcement of judgments, starting with the Kiev Treaty as the most specific, CIS-wide multilateral instrument on jurisdiction, recognition and enforcement of judgments in B2B cases, then the Moscow Treaty as a further development of the former, and a bilateral Treaty between the Russian Federation and Belarus which, like the Kiev Treaty, applies to B2B cases. A second group of more general treaties on legal assistance and cooperation is then headed by the most important regional instrument in this category, the Minsk Convention, followed by several bilateral treaties.

Where the instruments examined contain themselves explicit rules on the relationship with other (future) instruments, these rules will be applied to the preliminary draft Hague

¹ This expression refers to the Conventions of Brussels and Lugano on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 and 16 September 1988, respectively, as well as to Council Regulation (EC) No 44/2001 of 22 December 2000 on the same issues which has replaced the Brussels Convention in the relations among all European Union (EU) Member States with the exception of Denmark. Between Denmark and the other fourteen "old" EU Member States (*i.e.* before the enlargement which took place on 1 May 2004), the Brussels Convention still applies. The almost identical Lugano Convention covers all fifteen "old" EU Member States plus Iceland, Norway, Poland and Switzerland.

² See already A. Schulz, "Report on the First meeting of the Informal Working Group on the Judgments Project – 22-25 October 2002", Preliminary Document No 20 of November 2002, p. 16, available at < www.hcch.net >.

³ The Treaty establishing the Commonwealth of Independent States was signed by Belarus, the Russian Federation and Ukraine in Minsk on 8 December 1991. Further nine States (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan) joined the CIS by Protocol to the Treaty establishing the CIS signed in Alma-Ata on 21 December 1991. According to the Protocol, the Treaty establishing the CIS enters into force for the State concerned on the day of ratification. All the States that signed the Treaty or the Protocol have afterwards ratified it. From the twelve CIS Member States only Belarus, Georgia, the Russian Federation and Ukraine are Member States of the Hague Conference. However, it is to be assumed that a Hague Convention on Choice of Court in B2B Cases would, as it is tradition for Hague Conventions, also be open to non-Member States of the Hague Conference. Therefore, the information on membership of CIS Member States to the Hague Conference given in this document does not imply that a possible conflict between any CIS instrument and a possible Hague Convention on Choice of Court in B2B Cases could not arise for non-Member States.

On 7 October 2002 in Kishinev a Treaty establishing the Council of the Chairmen of the highest arbitral, commercial, economic and other courts hearing commercial cases was adopted. Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Ukraine are party to the Treaty. One of the main functions of the Council is to carry out consultations in order to work out common positions in the field of execution of judgments of one State on the territory of the others (Article 2 of the Council's Statutes).

Convention on Exclusive Choice of Court Agreements. Where, on the other hand, no specific rules have been identified, the relationship between any existing CIS instrument and the Hague Convention would be governed by the general rules of international treaty law. These rules have been the topic of a separate paper,⁴ and therefore, in these cases, this paper will limit itself to identifying the overlap and possible conflict in substance.

II. THE KIEV TREATY

The Treaty Concerning the Modalities of the Settlement of Disputes Related to the Exercise of Commercial Activity⁵ was adopted in Kiev on 20 March 1992. It was the first treaty among the CIS Member States on the recognition and enforcement of judgments⁶ and contains rules on the settlement of disputes and enforcement of corresponding judgments among legal persons and entrepreneurs,⁷ *i.e.* in B2B cases.

The Treaty is open to the CIS Member States only.⁸ It was signed and – with the exception of Moldova – also ratified by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. The Treaty entered into force on 19 December 1992. Azerbaijan acceded to it, but the accession process has not yet been completed.

The Treaty is a “double convention”, its provisions on jurisdiction read as follows:

“Article 4

(1) The competent court of the CIS Member State may hear cases mentioned in Article 1⁹ if:

- a) the defendant had his permanent residence or seat on the territory of this CIS Member State on the day when the action was brought against him.

If there are multiple defendants who are situated in different CIS Member States, then the case can be heard upon the plaintiff’s choice before the court of the State where any of them is situated;

- b) the defendant’s enterprise or a branch carries out commercial, industrial or any other economic activity on the territory of the State concerned;
- c) the contractual obligation which is the subject of the dispute was performed or has to be performed in whole or in part on the territory of the State concerned;

⁴ See A. Schulz, “The Relationship between the Judgments Project and other International Instruments”, Preliminary Document No 24 of December 2003.

⁵ *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, p. 85. An English translation is available in Annex I to this document.

⁶ There were two “predecessors” to the Kiev Treaty: the Agreement on co-operation between commercial and arbitral courts of Belarus, the Russian Federation and Ukraine of 21 December 1991 (see the mutual recognition and enforcement provision in Article 6) and the Agreement on co-operation and collaboration of arbitral courts of Kazakhstan and the Russian Federation of 27 March 1992 (see the mutual recognition and enforcement provision in Article 4). The status of both Agreements is questionable: they were concluded by the heads of the highest commercial courts of the countries concerned. The Kiev Treaty does not mention them explicitly, so it did not replace them, but they do not seem to be applied any more.

⁷ Article 1.

⁸ Article 13.

⁹ *I.e.* disputes arising in connection with civil and commercial relations between legal persons and entrepreneurs. This explanation in the footnote has been added by us for purposes of better understanding. Text in parentheses (*e.g.* in Article 4 (1) *b*) of the Kiev Treaty) is original.

- d) the act or another circumstance which gave rise to the claim for damages took place on the territory of the State concerned;
- e) the plaintiff who claims harm of his professional reputation has his permanent residence or seat on the territory of the State concerned;
- f) the supplier, contractor or provider of services is situated on the territory of this State and the dispute concerns the conclusion, alteration or termination of a contract.

(2) Competent courts of the CIS Member States can also hear cases if there is a written agreement between the parties on submitting the dispute to this court.

If there is such an agreement, the court of another CIS Member State shall dismiss the proceedings upon the defendant's request, provided that such request is made before the judgment has been rendered.

(3) Exclusive jurisdiction for claims of legal persons and entrepreneurs concerning property rights in immovables is vested in the court of the CIS Member State where the immovable is situated.

(4) Exclusive jurisdiction for claims challenging non-normative acts of state authorities and other authorities in whole or in part is vested in the court of the place where the authority is situated. The same rule applies to claims brought by legal persons for damages caused by such acts or by the mentioned authorities' inappropriate performance of obligations towards legal persons and entrepreneurs.

The parties may not alter the jurisdiction laid down in paragraphs 3 and 4 through an agreement.

(5) The court which has jurisdiction to determine a claim shall also determine a counter-claim and a set-off claim arising out of the same legal transaction on which the original claim is based."

The Treaty's rules on mutual recognition and enforcement of judgments of commercial courts read as follows:

"Article 7

The CIS Member States mutually recognise and enforce judgments of competent courts which have the effect of *res judicata*.

Judgments rendered by competent courts of one CIS Member State shall be enforced on the territories of other CIS Member States.

Judgments rendered by a competent court of one CIS Member State which provide for execution to be levied upon the debtor's property shall be enforced on the territory of another CIS Member State by authorities appointed by a court or determined in accordance with the laws of this State.

Article 8

A judgment is to be enforced upon request of the interested party.

With the request are to be enclosed:

- obligatorily, a properly certified copy of the judgment to be enforced;

- an official document confirming that the judgment has the effect of *res judicata*, if it is not apparent from the text of the judgment;
- evidence that the debtor was served with the summons;
- the enforcement document.¹⁰

Article 9

Enforcement of a judgment may be refused upon request of the party against which it is directed only if this party delivers evidence of the following to the competent court in the State where enforcement is sought:

- a) a court of the State addressed had earlier rendered a judgment which has the effect of *res judicata* in a case between the same parties, concerning the same subject matter and on the same grounds;
- b) a judgment of a competent court of a CIS Member State or of a court of a non-CIS Member State, rendered in a dispute between the same parties concerning the same subject matter and on the same grounds, has already been granted recognition;
- c) the dispute was solved by a court incompetent according to this Treaty;
- d) the other party was not served with the summons;
- e) the three-year limitation period for filing the judgment for enforcement has expired.”

The language of the Treaty gave rise to different opinions on its enforcement regime. It has been argued that the Treaty provides for a traditional *exequatur* procedure,¹¹ otherwise the bilateral Treaty between the Russian Federation and Belarus of 2001¹² abolishing *exequatur* would not have been necessary.¹³ However, the position of some other Russian commentators¹⁴ including one who is linked¹⁵ to the Highest Arbitral Court of the Russian Federation¹⁶ is that the Kiev Treaty has abolished the *exequatur*

¹⁰ Enforcement document is an enforcement order issued by the court of origin on the basis of the judgment.

¹¹ By “*exequatur*” we mean the procedure of issuing a national authoritative act upon a foreign judgment by which the foreign judgment is granted enforceability in the State where enforcement is sought, as well as the authoritative act itself.

¹² See in Part IV below.

¹³ See A. Muranov, *Ispolnenije inostrannyh sudebnyh i arbitražnyh rešenij: kompetencija rossijskih sudov* (Enforcement of foreign judgments: jurisdiction of Russian courts), Moscow 2002, pp. 28-29; N. Marysheva, in: N. Marysheva (ed.), *Meždunarodnoje častnoje pravo* (Private international law), Moscow 2000, pp. 485-486; T. Morshchakova, *Novyj porjadok vzajmnogo ispolnenija Rossiej i Belarusju sudebnyh aktov po hozjajstvennym sporam* (New procedure of mutual enforcement of court judgments in commercial disputes by Russia and Belarus), in: *Rossijskaja justicija* (Russian Justice) 12/2002, p. 12. Nevertheless, the “added value” of the bilateral Treaty between the Russian Federation and Belarus can be seen in the absolute abolition of grounds for refusal.

¹⁴ See T. Neshataeva, *Obščije zamečanija po voprosu o priznanii i ispolnenii rešenij sudov i arbitražej inostrannyh gosudarstv po ekonomičeskim sporam* (Common remarks on the issue of recognition and enforcement of judgments of foreign courts and arbitration courts in commercial disputes), in: *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, pp. 7, 9-10; N. Shebanova, *Priznanije i ispolnenije inostrannyh rešenij* (Recognition and enforcement of foreign judgments), in: *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, pp. 14-16; M. Boguslawskij, *Internationales Zivilprozessrecht in den GUS-Staaten*, in: M. Boguslawskij / A. Trunk (Hrsg.), *Reform des Zivil- und Wirtschaftsprozessrechts in den Mitgliedstaaten der GUS. Die Beiträge zur Tagung in Kiel*, 15.-20. Oktober 2000, Bielefeld 2004, pp 19, 28; Jarkov, in: Jarkov (ed.), *Kommentarij k Arbitražnomu processual'nomu kodeksu Rossijskoj Federacii* (Commentary to the Arbitral procedural code of the Russian Federation), Moscow 2003, p. 542.

¹⁵ Tatjana Neshataeva is a judge and the Head of the Private International Law Department in the Highest Arbitral Court of the Russian Federation.

¹⁶ This is in fact the Highest Commercial Court of the Russian Federation. In some CIS Member States (e.g. in the Russian Federation) commercial State courts are called ‘arbitral courts’ due to historical tradition.

procedure,¹⁷ so that the creditor can go for enforcement of a judgment directly to a bailiff in the requested State. The debtor, however, has the right to contest the enforcement in the requested State. This last position was taken by the Highest Arbitral Court of the Russian Federation.¹⁸ According to Neshataeva,¹⁹ the highest commercial courts of the main CIS Member States declared that they would apply their national regime to the enforcement of judgments falling under the Kiev Treaty, *i.e.* accepted the abolition of *exequatur* procedure.

The Treaty does not contain any provisions on the relationship with other instruments.

III. THE MOSCOW TREATY

The Treaty on Mutual Enforcement of Judgments of Arbitral, Commercial and Economic Courts on the Territories of the CIS Member States²⁰ was adopted in Moscow on 6 March 1998. The Treaty is based, according to its preamble, on the Treaty on Creation of Economic Union of 24 September 1993.

The Convention is not restricted to the CIS Member States.²¹ It was signed by Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation and Tajikistan. So far Azerbaijan, Kazakhstan, Kyrgyzstan and Tajikistan have ratified the Treaty.²² It entered into force on 9 January 2001.

The Treaty regulates the mutual enforcement of final judgments of commercial courts of the Contracting States in commercial cases.²³ It was concluded, according to its preamble, in development of the Kiev Treaty Concerning the Modalities of the Settlement of Disputes Related to the Exercise of Commercial Activity of 20 March 1992.²⁴

It is a "double convention", although it does not itself contain direct rules on jurisdiction. According to its Article 2, the competent court shall be determined in accordance with Article 4 of the Kiev Treaty.²⁵

¹⁷ According to T. Neshataeva, Article 7 obliges the CIS States to mutually recognise and enforce judgments from other Contracting States. Enforcement is to be carried out by organs "appointed" by the court or designated by law. She concludes from this that the request for enforcement under Article 8 is not a request addressed to a court in the State where enforcement is sought, and that the Kiev Treaty does not require a compulsory *exequatur* procedure before a court in the requested State. Article 9, on the other hand, provides for a procedure initiated by the judgment debtor and aimed at blocking or stopping enforcement.

¹⁸ See Recital 17 of the Information Letter of the Presidium of the Highest Arbitral Court of the Russian Federation of 16 February 1998 No 29, in: *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Issue 4/1998, pp. 38, 54-55.

¹⁹ See T. Neshataeva, *Inostrannyje predprinimateli v Rossii. Sudebno-arbitražnaja praktika* (Foreign entrepreneurs in Russia. Jurisprudence of commercial courts), Moscow 1998, p. 92.

²⁰ *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, p. 192.

²¹ Article 18.

²² None of them is a Member State of the Hague Conference.

²³ Article 1, paragraph 1.

²⁴ According to Neshataeva, the Treaty aimed at "unifying the mechanism of enforcement of judgments" (see T. Neshataeva, *Obščije zamečanija po voprosu o priznanii i ispolnenii rešenij sudov i arbitražej inostrannyh gosudarstv po ekonomičeskim sporam* (Common remarks on the issue of recognition and enforcement of judgments of foreign courts and arbitration courts in commercial disputes), in: *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, pp. 7, 13.

²⁵ This means that, although the Kiev Treaty is open to the CIS Member States only, by way of this reference in the Moscow Treaty (which is also open to non-CIS Member States), the jurisdiction rules of the Kiev Treaty will bind States party to the Moscow Treaty, whether or not they are Members of the CIS or party to the Kiev Treaty.

The rules on mutual enforcement read as follows:

"Article 3

(1) Judgments of competent courts of one Contracting State that have the effect of *res judicata* are to be enforced indisputably on the territory of another Contracting State.

(2) Execution levied upon the debtor's property takes place in accordance with the laws of the State of the debtor's residence or seat upon the creditor's request directed to the competent court of the Contracting State concerned. The applicant has to submit:

- in all cases, a properly certified copy of the judgment to be enforced rendered by the competent court as well as a confirmation that it has the effect of *res judicata* (if it is not apparent from the text of the judgment);
- a document issued by the competent court confirming the debtor's participation in the proceedings, or, in case of non-participation, a document confirming his proper service with the summons;
- the enforcement document."²⁶

"Indisputably" can be understood in the sense that the procedure before the court addressed aimed at issuing *exequatur* according to Article 3, paragraph 2 does not require or even permit the participation of the enforcement debtor.²⁷ However, Azerbaijan made a reservation concerning Article 3 which replaces "indisputably" by the words "if it [*the foreign judgment*] does not contravene the national legislation of the Contracting State".

At the same time other provisions of the Moscow Treaty read:

"Article 5

On the basis of a request for payment made by the creditor which must contain a reference to this Treaty as well as the documents enumerated in Article 3, the debtor's Bank has to debit the money from the debtor's account. (...)

Article 8

The Bank returns the request for payment to the judgment creditor without execution if the creditor has failed to submit documents enumerated in Article 3 of the Treaty or if the debtor presents motivated objections against enforcement of the judgment based on grounds of Article 9 of the Treaty Concerning the Modalities of the Settlement of Disputes Related to the Exercise of Commercial Activity.

²⁶ Enforcement document is an enforcement order issued by the court of origin on the basis of the judgment.

²⁷ Because of the ambiguity of the term "indisputably", the Treaty has been appraised as a uniquely unsuccessful attempt to introduce the simplified regime of enforcement of commercial courts' judgments for the whole CIS. See A. Muranov, *Novyj porjadok vzaimnogo ispolnenija aktov arbitražnyh sudov Rossii i hozjajstvennyh sudov Belorussii. Soglašenije ot 17 janvarja 2001 g.: značenije i problemy* (New procedure of mutual enforcement of decisions of arbitral courts of Russia and commercial courts of Belarus. The Treaty of 17 January 2001: importance and problems), in: *Moscow Journal of International Law*, Issue 4/2002, pp. 180, 190-191. Critically also Marysheva: "(...) the simplified procedure is imperfect (...)" (see N. Marysheva, *Voprosy kodifikacii norm meždunarodnogo graždanskogo processa v Rossii* (Questions of codification of international civil procedure in Russia), in: *Žurnal rossijskogo prava* (Journal of Russian Law), Issue 6/2004, p. 35).

In this case the judgment creditor can apply to the competent court at the place of the debtor's residence or seat for enforcement of the judgment or for execution levied upon the debtor's property using the procedure prescribed by Article 8 of the Treaty Concerning the Modalities of the Settlement of Disputes Related to the Exercise of Commercial Activity."

This means that in cases other than the enforcement of a money judgment into a bank account, the creditor has to submit his foreign judgment to a court of the State where enforcement is sought under Article 3, paragraph 2 in order to obtain a declaration of enforceability (*exequatur*). For the enforcement of money judgments into a bank account, the Treaty contains a *lex specialis*. In this case, according to Article 5, no *exequatur* / declaration of enforceability according to Article 3, paragraph 2 is required in the first place. The creditor may address a request for payment directly to the debtor's bank. The bank would then examine whether the documents enumerated in Article 3, paragraph 2 have been submitted. If this is the case and there is no opposition of the debtor against execution on grounds based on Article 9 of the Kiev Treaty, the bank would pay without a court in the State of enforcement having been involved. Otherwise, the creditor would have to go to court in the State where enforcement is sought, and this court would apply Article 8 *et seq.* of the Kiev Treaty.

The Treaty does not contain any provisions on the relationship with other instruments.

IV. THE BILATERAL TREATY BETWEEN THE RUSSIAN FEDERATION AND BELARUS

The Russian Federation and Belarus,²⁸ while both being CIS Member States, have been developing closer integration. This development can be traced in a number of agreements between the countries going back to 1996: the Treaty on Establishment of the Commonwealth of Russia and Belarus of 2 April 1996, the Treaty on the Union of Belarus and Russia of 2 April 1997 and the Treaty on Establishment of a Unified State of 8 December 1999.²⁹

The Treaty between the Russian Federation and Belarus on Mutual Enforcement of Judgments of Arbitral Courts of the Russian Federation and Commercial Courts of Belarus³⁰ was signed in Moscow on 17 January 2001. It was ratified by both States and entered into force on 29 July 2002. It is the first international treaty in force for the Russian Federation which undoubtedly abolishes *exequatur*.³¹

The preamble of the Treaty significantly narrows its scope of application stating that: "the Treaty applies to the commercial actors of the Russian Federation and Belarus only".

It is a "double convention", whereby the competent court shall be determined in accordance with Article 4 of the Kiev Treaty.³²

The Treaty does not contain any provisions on the relationship with other instruments.

²⁸ Both States are Member States of the Hague Conference.

²⁹ In accordance with Article 1 of the Treaty on Establishment of a Unified State of 1999, "Russia and Belarus (...) create a Unified State". However, Belarusian judgments in the Russian Federation and *vice versa* still have to be treated as "foreign" with regard to this Treaty, which is open to other States, too (Article 65).

³⁰ *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Issue 11/2002, p. 113.

³¹ Expressly in Article 1, paragraph 1.

³² Article 1, paragraph 2.

V. LEGAL AID TREATIES BETWEEN THE CIS MEMBER STATES

1. THE MINSK CONVENTION

The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters³³ was adopted in Minsk on 22 January 1993 and amended by a Protocol of 28 March 1997.³⁴ This comprehensive Convention regulates issues which were traditionally covered by Soviet / Russian bilateral legal aid treaties, such as legal assistance (*i.e.* taking of evidence, service of documents, etc.), conflict of law rules, jurisdiction and provisions on recognition and enforcement of judgments in the field of co-operation in civil and family matters, as well as legal assistance, criminal prosecution and extradition in the field of co-operation in criminal matters.

The Convention is not restricted to the CIS Member States.³⁵ It was signed and ratified by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Azerbaijan and Georgia acceded to the Convention. The Convention in its original version entered into force on 19 May 1994, the Protocol of 1997 entered into force on 17 September 1999.³⁶ The Convention as amended by the Protocol of 1997 is in force for Armenia, Belarus, Kazakhstan, Moldova, the Russian Federation, Tajikistan and Ukraine.

This is a “mixed convention”: fora not provided for by the Convention can originate in the national legislation of the Contracting States. Its rule on choice of court clauses reads as follows:

“Article 21 – Contractual Jurisdiction

(1) Courts of the Contracting States may hear also other cases where the parties have agreed in writing to submit the corresponding disputes to such courts.

However, the exclusive competence stemming from Paragraph 3 of Article 20 and other provisions of Parts II–V³⁷ of the present Section, and from the internal legislation of the Contracting State concerned, may not be altered by agreement of the parties.

(2) If there is an agreement to refer a dispute to another court, the court hearing such dispute shall dismiss the proceedings in the case upon the respondent’s request.”

³³ *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, p. 89. An English translation of the original version of 1993 is available at < http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Transnational_criminal_justice/Information/OC_INF_44E.asp >. However, that translation contains some mistakes. For the purposes of this study we therefore use our own translation. An English translation of the Convention as amended by the Protocol of 1997 can be found in Annex II to this document.

³⁴ A new Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters was adopted in Kishinev on 7 October 2002. Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan and Ukraine have signed the Kishinev Convention. So far, Azerbaijan, Belarus, Kazakhstan and Kyrgyzstan have ratified the Convention, which entered into force on 27 April 2004. This Convention replaces the Minsk Convention in relations between the States which have ratified both Conventions (Article 120, paragraph 3 of the Kishinev Convention).

³⁵ Article 86.

³⁶ With the exception of Turkmenistan, all States which had signed and ratified the original Convention, plus Azerbaijan and Georgia, also signed the Protocol of 1997.

³⁷ In commercial cases, the Convention confers exclusive jurisdiction to hear cases concerning rights *in rem* in immovables upon courts of the State in which the immovable is situated. Exclusive jurisdiction to hear disputes arising out of contracts for carriage of goods, passengers and luggage is conferred upon courts of the State in which the contractor company has its seat (Article 20, paragraph 3). Parts II-V of Section II concern divorce and other similar matters.

The Convention provides for a traditional *exequatur* procedure.³⁸ The grounds for refusal of recognition and enforcement are enumerated in its Article 55:

“Article 55 – Refusal of Recognition and Enforcement of Judgments

The recognition of a judgment pursuant to Article 52 and the declaration of enforceability may be refused if:

- a) the judgment does not have the effect of *res judicata* or is not enforceable under the legislation of the Contracting State of origin, unless such judgment is enforceable before becoming *res judicata*; or
- b) the respondent did not take part in the proceedings as a result of either the respondent itself or its duly authorized representative not having been duly served timely summons to the court; or
- c) a judgment has already been rendered and has the effect of *res judicata*, or a judgment rendered by a court in a third state has already been recognized, in the Contracting State addressed in a case involving the same parties, regarding the same subject matter, and based on the same cause of action, or a judicial authority in such Contracting State has already instituted proceedings in such case; or
- d) pursuant to this Convention or, in those cases not addressed hereunder, to the legislation of the Contracting State addressed, a judicial authority of such Contracting State has exclusive jurisdiction over the matter concerned; or
- e) there is no documented evidence to confirm that the parties have agreed on contractual jurisdiction in respect of the matter in question; or
- f) the period of limitation applicable to enforcement according to the legislation of the Contracting State addressed has expired.”

The Convention applies to judgments in civil and family matters. It contains the following clause on the relationship with other instruments:

“Article 82 – Convention’s Relationship with other International Agreements

This Convention shall not affect the provisions of other international agreements to which the Contracting States are parties.”

It is not clear whether “are parties” only refers to treaties to which the Contracting States are already parties at the time they join the Minsk Convention, or also to treaties they conclude or join subsequently. Therefore, while it is clear that the Kiev Treaty with its simplified enforcement regime for civil judgments in B2B cases prevails over the Minsk Convention,³⁹ it is unclear whether this provision would also give precedence to the Judgments Convention yet to be concluded.

³⁸ Article 53.

³⁹ See T. Neshataeva, *Inostrannyje predprinimateli v Rossii. Sudebno-arbitražnaja praktika* (Foreign entrepreneurs in Russia. Jurisprudence of commercial courts), Moscow 1998, p. 93; N. Marysheva, in: N. Marysheva (ed.), *Meždunarodnoje častnoje pravo* (Private international law), Moscow 2000, p. 491. Article 1, paragraph 2 of the Moscow Treaty provides explicitly that the provisions of the Minsk Convention are to be applied in cases not regulated by the Moscow Treaty or the Kiev Treaty.

2. BILATERAL LEGAL AID TREATIES

The Russian Federation⁴⁰ has concluded bilateral Treaties on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters with the following CIS Member States: Azerbaijan,⁴¹ Georgia,⁴² Kyrgyzstan⁴³ and Moldova.⁴⁴

These Treaties are very similar to each other. They contain sporadic rules on direct jurisdiction (defendant's forum, choice of court, *forum delicti*, etc.) while internal rules on jurisdiction may continue to apply, which makes them "mixed conventions". They all prescribe a traditional *exequatur* procedure for "final judgments in civil and family matters". The grounds for refusal of recognition and enforcement contained in Article 56 of each Treaty are the same:

"Article 56

Recognition and enforcement of a judgment may be refused if:

- (1) the enforcement debtor or enforcement creditor did not participate in the proceedings as a result of the fact that he or his representative was not served with the summons in appropriate time and order;
- (2) a court of the State addressed had earlier rendered a judgment which has the effect of *res judicata* in a case between the same parties and concerning the same subject matter or if proceedings in this case were earlier initiated in this Contracting State;
- (3) according to this Treaty or to the national legislation of the State addressed its courts have exclusive jurisdiction."

None of the bilateral legal aid Treaties contains a provision on the relationship with other instruments. Yet, the Kiev Treaty prevails in B2B cases as *lex specialis* in relations between the States that are party to both Treaties.

VI. CONCLUSION

There is an overlap between international instruments, which are in force between the CIS Member States, and the preliminary draft Hague Convention on Exclusive Choice of Court Agreements, both at the jurisdiction and recognition and enforcement stage.

⁴⁰ According to M. Boguslawskij, Ukraine has a bilateral Legal Aid Treaty with Moldova, Turkmenistan – with Georgia, Kazakhstan and Uzbekistan, respectively (see M. Boguslawskij, *Internationales Zivilprozessrecht in den GUS-Staaten*, in: M. Boguslawskij / A. Trunk (eds.), *Reform des Zivil- und Wirtschaftsprozessrechts in den Mitgliedstaaten der GUS, Die Beiträge zur Tagung in Kiel*, 15.-20. Oktober 2000, Bielefeld 2004, pp. 19, 21.

⁴¹ Treaty between the Russian Federation and Republic of Azerbaijan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 December 1992, *Sobranije Zakonodatelstva Rossijskoj Federacii* (Federal Law Gazette of the Russian Federation) of 1 May 1995, Issue 18, Article 1598. The Treaty entered into force on 20 January 1995.

⁴² Treaty between the Russian Federation and Republic of Georgia on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 15 September 1995, *Vestnik Vysšego Arbitražnogo Suda Rossijskoj Federacii* (Bulletin of the Highest Arbitral Court of the Russian Federation), Special Annex to Issue 3/1999, p. 129. The Treaty is not in force yet.

⁴³ Treaty between the Russian Federation and Republic of Kyrgyzstan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 14 September 1992, *Bjulleten' meždunarodnyh dogovorov* (Bulletin of International Treaties), Issue 3/1995, p. 16. The Treaty entered into force on 25 February 1994.

⁴⁴ Treaty between the Russian Federation and Republic of Moldova on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 25 February 1993, *Sobranije Zakonodatelstva Rossijskoj Federacii* (Russian Federal Law Gazette) of 15 May 1995, Issue 20, Article 1766. The Treaty entered into force on 26 January 1995.

At the jurisdiction stage, this is true for the Kiev Treaty, the Moscow Treaty and the bilateral Treaty between the Russian Federation and Belarus by way of their reference to the jurisdiction rules contained in Article 4 of the Kiev Treaty, as well as for the Minsk Convention and the bilateral Treaties between the Russian Federation and Azerbaijan, Georgia, Kyrgyzstan and Moldova, respectively.

At the stage of recognition and enforcement, there is equally an overlap between the preliminary draft Hague Convention on Exclusive Choice of Court Agreements on the one hand and all the treaties just mentioned.

The application of either one of the Treaties discussed in this paper or of the future Hague Convention may lead to different results. Whether they would be not just different but irreconcilable, and therefore require a specific rule, will depend on the particular case.

Except for the Minsk Convention (Article 82), none of the CIS instruments contains a clause on the relationship with other instruments, and the latter is unclear as to whether it also relates to future instruments. The overlap can be resolved by inserting a "disconnection clause" into the Hague Convention on Exclusive Choice of Court Agreements. Otherwise its relationship with the existing CIS Treaties will be governed by the general principles of international treaty law,⁴⁵ should any of the CIS Member States wish to become a party to the future Hague Convention on Exclusive Choice of Court Agreements.

⁴⁵ On these principles, see A. Schulz, "The Relationship between the Judgments Project and other International Instruments", Preliminary Document No 24 of December 2003. To sum up, these principles lead to precedence of *lex posterior* and *lex specialis* where all parties to the earlier treaty are also parties to the later treaty. Where this is not the case, it has to be examined whether the earlier treaty explicitly permits precedence of a more recent treaty in such cases, or, in the absence of such a rule, whether the application of the later treaty in relations between a State party to both and a State party to the later treaty (or another State party to both) could infringe any rights of a State party to the earlier treaty only, or would otherwise be incompatible with the purpose of that treaty.

ANNEXES

TREATY
Concerning the Modalities of the Settlement of Disputes
Related to the Exercise of Commercial Activity
(Kiev, 20 March 1992)

The Governments of the States - Members of the Commonwealth of Independent States, attaching great importance to the development of co-operation in the sphere of settlement of commercial disputes between actors which are located in different CIS Member States, based on necessity of providing equal opportunities for protection of rights and legitimate interests among all commercial actors, have agreed on the following:

Article 1

This Treaty regulates matters of hearing cases originating out of contractual and other civil relations between commercial actors and their relations with state authorities and other authorities, as well as enforcement of judgments concerned.

Article 2

For the purposes of this Treaty "commercial actors" mean enterprises, their associations, organizations of any legal form, as well as individuals who have the status of entrepreneur according to the laws of the CIS Member States and their associations.

Article 3

Commercial actors of every CIS Member State shall on the territories of other CIS Member States enjoy legal and judicial protection of their property rights and legitimate interests equally to commercial actors of this state.

Commercial actors of each CIS Member State shall have the right to turn freely to courts, commercial courts, arbitral tribunals and other authorities which are competent to hear cases mentioned in Article 1 (hereinafter – "competent courts"), to plead, to bring forward motions, to file claims and to perform other procedural acts on the territories of other CIS Member States.

Article 4

(1) The competent court of the CIS Member State may hear cases mentioned in Article 1 if:

- a) the defendant had his permanent residence or seat on the territory of this CIS Member State on the day when the action was brought against him.
If there are multiple defendants who are situated in different CIS Member States, then the case can be heard upon the plaintiff's choice before the court of the State where any of them is situated;
- b) the defendant's enterprise or a branch carries out commercial, industrial or any other economic activity on the territory of the State concerned;
- c) the contractual obligation which is the subject of the dispute was performed or has to be performed in whole or in part on the territory of the State concerned;

- d) the act or another circumstance which gave rise to the claim for damages took place on the territory of the State concerned;
- e) the plaintiff who claims harm of his professional reputation has his permanent residence or seat on the territory of the State concerned;
- f) the supplier, contractor or provider of services is situated on the territory of the State concerned and the dispute concerns the conclusion, alteration or termination of a contract.

(2) Competent courts of the CIS Member States can also hear cases if there is a written agreement between the parties on submitting the dispute to this court. If there is such an agreement, the court of another CIS Member State shall dismiss the proceedings upon the defendant's request, provided that such request is made before the judgment has been rendered.

(3) Exclusive jurisdiction for claims of commercial actors concerning property rights in immovables is vested in the court of the CIS Member State where the immovable is situated.

(4) Exclusive jurisdiction for claims challenging non-normative acts of state authorities and other authorities in whole or in part is vested in the court of the place where the authority is situated. The same rule applies to claims brought by commercial actors for damages caused by such acts or by the mentioned authorities' inappropriate performance of obligations towards commercial actors.

The parties may not alter the jurisdiction laid down in paragraphs 3 and 4 through an agreement.

(5) The court which has jurisdiction to determine a claim shall also determine a counter-claim and a set-off claim arising out of the same legal transaction on which the original claim is based.

Article 5

Competent courts and other authorities of the CIS Member States shall mutually grant legal aid.

Mutual legal aid includes handing-in and mailing documents and performing other steps in the proceedings, such as conducting expertise and hearing the parties, witnesses, experts and other persons.

When granting legal aid competent courts and other authorities of the CIS Member States communicate with each other directly.

When granting legal aid applications competent courts and other authorities addressed shall apply their national laws.

When applying for legal aid and enforcement of judgments, the enclosed documents shall be composed in the language of the applying State or in Russian.

Article 6

Documents that are issued or authorized by an organ or a specially entrusted person within their competence and that comply with the established form and are officially sealed on the territory of one CIS Member State shall be accepted on the territories of other CIS Member States without any special authorization.

Documents that are treated as official documents on the territory of one CIS Member State shall have evidential value of official documents on the territories of other CIS Member States.

Article 7

The CIS Member States mutually recognise and enforce judgments of competent courts which have the effect of *res judicata*.

Judgments rendered by competent courts of one CIS Member State shall be enforced on the territories of other CIS Member States.

Judgments rendered by a competent court of one CIS Member State which provide for execution to be levied upon the debtor's property shall be enforced on the territory of another CIS Member State by authorities appointed by a court or determined in accordance with the laws of this State.

Article 8

A judgment is to be enforced upon request of the interested party.

With the request are to be enclosed:

- obligatorily, a properly certified copy of the judgment to be enforced;
- an official document confirming that the judgment has the effect of *res judicata*, if it is not apparent from the text of the judgment;
- evidence that the debtor was served with the summons;
- the enforcement document.

Article 9

Enforcement of a judgment may be refused upon request of the party against which it is directed only if this party delivers to the competent court in the State where enforcement is being sought evidence of the following:

- a) a court of the State addressed had earlier rendered a judgment which has the effect of *res judicata* in a case between the same parties, concerning the same subject matter and on the same grounds;
- b) a judgment of a CIS Member State competent court or of a non-CIS Member State court rendered in a dispute between the same parties concerning the same subject matter and on the same grounds, has already been granted recognition;
- c) the dispute was solved by a court incompetent according to this Treaty;
- d) the other party was not served with the summons;
- e) the three-year limitation period for filing the judgment for enforcement has expired.

Article 10

The highest courts of the CIS Member States will settle controversial issues arising in connection with enforcement of judgments of competent courts.

Article 11

Civil legislation of one CIS Member State shall be applied on the territory of another CIS Member State according to the following rules:

- a) Legal capacity of legal persons and entrepreneurs is determined by the laws of the CIS Member State on which territory the legal person was established or the entrepreneur was registered;
- b) Property legal relations are determined by the laws of the State where the asset is located. Property rights for means of conveyance which are to be registered are determined by the laws of the State where the means of conveyance is registered;
- c) Accrual and extinction of property rights and other rights *in rem* is determined by the laws of the State where the asset was located at the moment when the act or another circumstance occurred that caused such accrual or extinction.

Accrual and extinction of property rights and other right *in rem* for an asset which is subject to a legal transaction is determined by the laws of the State where the legal transaction was concluded, unless the parties agreed otherwise;

- d) form of the legal transaction is determined by the laws of the State where it was concluded. Form of legal transaction concerning real estate and another immovable property is determined by the laws of the State where the property is located;
- e) form and period of the proxy is determined by the laws of the State where the proxy was issued;
- f) rights and duties of the parties of a legal transaction are determined by the laws of the State where it was concluded, unless the parties agreed otherwise;
- g) rights and duties of the parties of obligations resulting from torts are determined by the laws of the State where the act or another circumstance which gave rise to the claim for damages took place;

These laws should not be applied if the act or another circumstance which gave rise to the claim for damages is not unlawful according to the laws of the State of litigation;

- h) questions of limitation period are to be solved according to the laws of the State that are to be applied to corresponding relation.

Article 12

The Highest Courts and the Ministries of Justice of the CIS Member States shall upon request of corresponding organs of another State deliver information on laws which are in force or were in force in their States as well as on its application practice.

Article 13

This Treaty is open to signing by CIS Member States and requires ratification. It will enter into force after its ratification by at least three CIS Member States on the date of depositing the third instrument of ratification to the depositary State. For States which will ratify the Treaty later on, it will enter into force on the date of depositing their instruments of ratification.

Drawn up in the city of Kiev on 20 March 1992 in the original in Russian. The Original is kept in the Archive of the Government of the Republic of Belarus that will direct authorized copies of it to the States signatories of this Treaty.

**CONVENTION ON LEGAL ASSISTANCE AND LEGAL RELATIONS
IN CIVIL, FAMILY, AND CRIMINAL MATTERS
(Minsk, 22 January 1993)
(as amended on 28 March 1997)**

The member nations of the Commonwealth of Independent States participating in this Convention and hereinafter referred to as the "Contracting States",

Desirous of assuring their nationals and the other persons resident on their territories of the same degree of legal protection for their personal and proprietary rights in each of the Contracting States as is accorded to their own nationals; and

Considering it highly significant to develop cooperation between their judicial authorities in extending mutual legal assistance in civil, family, and criminal matters,

Hereby agree as follows:

**Section I
General Provisions**

**Part I
Legal Protection**

**Article 1
Grant of Legal Protection**

1. The nationals of each Contracting State and the other persons resident on its territory shall be entitled in all the other Contracting States to the same degree of legal protection for their personal and proprietary rights as is accorded to its own nationals.
2. The nationals of each Contracting State and the other persons resident on its territory shall have the right of free and unimpeded recourse to the courts, public prosecutors' offices, police, and other institutions of the other Contracting States that have jurisdiction over civil, family, and criminal matters (hereinafter, the "judicial authorities"), and shall be entitled to apply thereto, submit petitions, file claims, and perform other procedural acts on the same conditions with its own nationals.
3. This Convention shall also be applicable to the legal entities organized under the laws of any of the Contracting States.

**Article 2
Exemption From Duties and Reimbursement for Expenses**

1. The nationals of each Contracting State and the other persons resident on its territory shall be exempted from any payment of, and from any reimbursement for, any judicial and notarial fees and expenses, and shall enjoy free legal assistance on the same conditions with its own nationals.
2. The privileges granted by Paragraph 1 of the present Article shall extend to all of the procedural acts performed in a particular matter, including, but not limited to, the enforcement of a judgment.

Article 3
Issue of Documents Evidencing Marital and Property Status

1. The privileges granted by Article 2 above shall be available on the basis of a document evidencing the marital and property status of the person initiating a petition. Such document shall be issued by a competent authority of the Contracting State where the petitioner is domiciled or resident.
2. If the petitioner is not domiciled or resident in any Contracting State, it may present a document issued by an appropriate diplomatic mission or consular office of that Contracting State of which it is a national.
3. The authority deciding on a petition for the above privileges may request additional data or necessary clarifications from the authority which has issued said document.

Part II
Legal Assistance

Article 4
Extension of Legal Assistance

1. The judicial authorities of the Contracting States shall extend legal assistance in civil, family, and criminal matters in accordance with the relevant provisions of the present Convention.
2. The judicial authorities of the Contracting States shall also grant legal assistance to other institutions in those matters specified in Paragraph 1 of the present Article.

Article 5
Liaison Procedure

When acting pursuant to this Convention, the competent judicial authorities of the Contracting States shall communicate with one another through their central, regional, and other agencies, unless a different liaison procedure is prescribed hereunder. The Contracting States shall determine lists of their central, regional, and other agencies duly empowered to maintain direct contacts by notice to the depositary.

Article 6
Scope of Legal Assistance

The Contracting States shall provide one another with legal assistance by performing such procedural and other acts as are stipulated by the legislation of the Contracting State requested to take such measures, including, but not limited to, the execution and sending of documents, the conduct of inspections and searches, the recovery and delivery of physical evidence, the performance of expert examinations, the interrogation of parties to the proceedings, third parties, suspects, indictees, victims, witnesses, and experts, efforts to track down certain individuals, criminal prosecution, the extradition of persons to be held criminally liable or face that punishment already fixed for them in appropriate sentences, the recognition and enforcement of judgments in civil matters, verdicts on civil claims, and executive endorsements, and the service of process.

Article 7
Contents and Form of Letters of Request for Legal Assistance

1. A letter of request for legal assistance shall:
 - a) identify the authority whose assistance is sought;
 - b) identify the authority seeking such assistance;
 - c) specify the case regarding which the legal assistance is sought;
 - d) indicate the first names, surnames, domiciles or residence addresses, nationalities, and occupations of the parties to the proceedings, witnesses, suspects, indictees, respondents, convicts, or victims, as well as, in criminal matters, their places and dates of birth and, if possible, the first names and surnames of their parents or, for legal entities, their names and registered and/or actual addresses;
 - e) if those parties listed in paragraph *d)* above have any representatives, indicate the latter's first names, surnames, and addresses;
 - f) describe the nature of the request and provide such other data as may be necessary for its satisfaction; and
 - g) in criminal matters, also describe and classify the misdeed in question and report the extent of the resulting damage, if any.
2. Such letter requesting the service of process shall also indicate the recipient's precise address and the heading of the document to be delivered.
3. A letter of request shall be signed and evidenced by an official seal of the authority seeking assistance.

Article 8
Performance Procedure

1. When acting upon a letter of request, the authority addressed shall apply the legislation of its own country. If petitioned by the authority seeking assistance, it may also apply the procedural rules of the Contracting State where the latter is based, unless such rules are inconsistent with the legislation of the Contracting State where such assistance is sought.
2. If the authority addressed is not competent to satisfy the request submitted, it shall pass it onto a competent authority and shall notify the authority requesting assistance accordingly.
3. If petitioned by the authority seeking assistance, the authority addressed shall notify the latter and the other parties concerned of the time and place of the request's fulfilment so that they should be able to attend its satisfaction in accordance with the legislation of the Contracting State where such assistance is sought.
4. Where the precise address of the person identified in a letter of request is unknown, the authority addressed shall take the measures necessary to ascertain such address in accordance with the legislation of the Contracting State where such authority is based.
5. After completing action on a letter of request, the authority addressed shall return the corresponding documents to the authority which applied for such assistance; where the legal assistance sought cannot be provided as requested, the authority addressed shall also report those circumstances that prevent such performance and shall return the corresponding documents to the authority seeking that assistance.

Article 9
Summons of Witnesses, Victims, Civil Claimants,
Civil Respondents, Their Representatives, and Experts

1. Regardless of their nationality, no witness, victim, civil claimant, civil respondent, their representative, or expert reporting to a judicial authority of the Contracting State seeking assistance on the basis of a summons served upon such person by an authority of the Contracting State addressed may be held criminally or administratively liable, detained, or punished in the Contracting State seeking their assistance for any act committed before crossing the state border. Nor may any such person be held liable, detained, or punished in connection with their witness testimony or expert opinion offered in connection with the criminal matter in controversy.

2. Those persons specified in Paragraph 1 of the present Article shall forfeit the guarantee granted therein if they fail, despite being able to do so, to leave the Contracting State that sought assistance within 15 days from the date on which the interrogating judicial authority advised them of having no longer any need for their presence. Such period shall be exclusive of the time during which said persons are unable to leave the Contracting State that sought assistance other than through their own fault.

3. The Contracting State that sought assistance shall reimburse each witness, expert, victim, and the latter's lawful representatives for those expenses incurred for their travels and sojourn on its territory, as well as for the shortfall in their wages resulting from the days off from their regular work; an expert shall also be entitled to compensation for the examination performed. A summons shall specify the type of payment the persons summoned may have the right to receive; upon their request, the judicial authority of the Contracting State seeking assistance shall pay an advance to cover their corresponding expenses.

4. No summons for any of those persons specified in Paragraph 1 of the present Article and domiciled in any Contracting State to report to a judicial authority of another Contracting State shall contain any threat of coercion to follow in the event of their non-appearance.

Article 10
Letters Requesting Service of Process

1. That judicial authority addressed by a letter of request shall serve process in accordance with that procedure in effect in its Contracting State if the documents to be delivered have been executed in the latter's language or in Russian or are accompanied by duly certified translations into such languages. Otherwise, it shall pass such documents onto the recipient if the latter agrees to accept them voluntarily.

2. If the documents concerned cannot be delivered at the address indicated in a letter of request, the judicial authority addressed shall initiate the measures necessary to ascertain such address. Should it prove impossible for the judicial authority addressed to find out that address, it shall advise the judicial authority seeking assistance accordingly and return the documents due for service.

Article 11
Confirmation of Service of Process

The requested service of process shall be confirmed by an appropriate acknowledgement which shall be signed by the recipient and evidenced by the official seal of the judicial authority addressed, indicate the date of such service, and carry the signature of an officer of the serving judicial authority, or by another document issued by the latter and describing the manner, place, and time of the service performed.

Article 12
Powers of Diplomatic Missions and Consular Offices

1. The Contracting States may serve process on their own nationals through their diplomatic missions or consular offices.
2. Upon requests from their competent authorities, the Contracting States may interrogate their own nationals through their diplomatic missions or consular offices.
3. In those matters described in Paragraphs 1 and 2 of the present Article, it shall not be permitted to have recourse to any coercion or any threat thereof.

Article 13
Validity of Documents

1. Those documents which have been executed or certified on the territory of one of the Contracting States by an authority or duly authorized person within their terms of reference and according to the form required in that Contracting State and evidenced by an official seal shall be subject to acceptance in the other Contracting States without the need for any special further certification.
2. Those documents which are accepted as official in any Contracting State shall enjoy the evidentiary force of official documents also in the other Contracting States.

Article 14
Sending of Civil-Status and Other Documents

1. The Contracting States shall satisfy requests for civil registration certificates to be sent without being translated and free of charge to one another directly through their civil registry offices subject to appropriate document transfer notices to the corresponding individuals.
2. Each Contracting State addressed shall satisfy requests for documents evidencing training standards, job seniority, and other documents concerning the personal or proprietary rights and interests of its nationals or other persons domiciled on its territory to be sent – without having such documents translated and free of charge – to another Contracting State requesting such assistance.

Article 15
Legal Information

The central judicial authorities of the Contracting States shall provide one another upon request with information about the internal legislation in effect or which was in effect on their territories and about the practices of its application by the judicial authorities.

Article 16
Ascertainment of Addresses and Other Data

1. The Contracting States shall assist one another - upon request and in accordance with their respective legislation - in ascertaining the addresses of persons domiciled on their territories, if necessary for the exercise by their nationals of their rights. In such matters, the Contracting State seeking assistance shall supply that data at its disposal which may help establish the address of the person identified in its request.
2. The judicial authorities of a Contracting State shall assist those of another Contracting State in identifying the employers and ascertaining the income levels of persons domiciled in the Contracting State addressed and facing property claims made by the judicial authorities of the Contracting State seeking assistance in civil, family, or criminal matters.

Article 17 Language

The judicial authorities of the Contracting States shall use the latter's state languages or the Russian language in their liaising hereunder. Should any documents be executed in the Contracting States' state languages, these shall be accompanied by duly certified translations into Russian.

Article 18 Expenses for Legal Assistance

No Contracting State addressed shall seek reimbursement for any of the expenses incurred for the legal assistance rendered. The Contracting States shall themselves bear any and all of the expenses for the extension of legal assistance on their territories.

Article 19 Refusal of Legal Assistance

A request for legal assistance may be turned down, in full or in part, if the grant of such assistance may be detrimental to the sovereignty or security, or is inconsistent with the legislation, of the Contracting State addressed. In such case, the Contracting State seeking legal assistance shall be promptly advised of the reasons why its corresponding request has been denied.

Section II Legal Relations in Civil and Family Matters

Part I Competence

Article 20 General Provisions

1. Unless stipulated otherwise in Parts II–V of the present Section, claims against persons resident in a Contracting State, regardless of their nationality, shall be filed with a court of such Contracting State, while those against a legal entity shall be filed with a court of that Contracting State where such legal entity's governing body, representative office, or branch is located.

Where proceedings involve several respondents resident or based on the territories of different Contracting States, the case shall be heard in that jurisdiction where any respondent of the claimant's own choice is resident or based.

2. Courts on the territory of a Contracting State shall also be competent where it is in the latter that:

- a) the respondent's enterprise or branch maintains trade, industrial operations, or other business; or
- b) the contractual obligation which is the subject of the dispute was performed or has to be performed in whole or in part; or
- c) the claimant in proceedings instituted to uphold the latter's honour, dignity, and business reputation is domiciled or resident.

3. The only courts competent to hear cases initiated over title and other rights *in rem* to real property shall be those of the place where the property in dispute is located.

Such claims against a carrier as arise out of or in connection with a contract for the transportation of freight, passengers, or luggage shall be filed at the place where the administration of the carrier duly confronted with an appropriate grievance is located.

Article 21
Contractual Jurisdiction

1. Courts of the Contracting States may hear also other cases where the parties have agreed in writing to submit the corresponding disputes to such courts.

However, the exclusive competence stemming from Paragraph 3 of Article 20 and other provisions of Parts II–V of the present Section, and from the internal legislation of the Contracting State concerned, may not be altered by agreement of the parties.

2. If there is an agreement to refer a dispute to another court, the court hearing such dispute shall dismiss the proceedings in the case upon the respondent's request.

Article 22
Interrelated Proceedings

1. Where proceedings have been instituted in a matter involving the same parties, regarding the same subject matter, and over the same cause of action in courts of two Contracting States as are competent to hear such disputes hereunder, the court that initiated its proceedings at the later date shall dismiss the case.

2. Such counter-claims and requests for offsets as emanate from the same legal relationship as the principal action shall be subject to the court dealing with the principal action.

Article 22-1
Requests for Public Prosecutors' Involvement in Civil Proceedings

A public prosecutor in a Contracting State may apply to a public prosecutor in another Contracting State for the institution of proceedings to protect the rights and lawful interests of nationals of the Contracting State seeking such assistance, or for the opportunity to participate in the trial of such matters, or for a cassation appeal, private protest, or supervisory protest to be lodged against judicial resolutions handed down in such matters.

Part II
Personal Status

Article 23
Legal Capacity

1. The legal capacity of a natural person shall be subject to the legislation of the Contracting State of which he is a national.

2. The legal capacity of a stateless person shall be subject to the law of the country where he is domiciled.

3. The legal capacity of a legal entity shall be subject to the legislation of the State under whose laws such legal entity has been established.

Article 24
Pronunciation of Persons to Be of Limited Legal Capacity or Legally Incapable.
Reinstatement of Legal Capacity

1. A court of that Contracting State of which the respondent is a national shall have jurisdiction in proceedings initiated to pronounce such person to be of limited legal capacity or legally incapable, with the exception of cases provided by Paragraphs 2 and 3 of the present Article.
2. Where a court of a Contracting State learns of any reasons why a person resident on the latter's territory, but being a national of another Contracting State should be pronounced to be of partial legal capacity or legally incapable, such court shall give an appropriate notice to a court of the Contracting State of which such person is a national.
3. Where that court of a Contracting State which has been notified of a reason why a person should be pronounced to be of partial legal capacity or legally incapable fails to initiate appropriate proceedings or to come back with its own opinion on the matter within the following three months, the case for the pronouncement of such person to be of limited legal capacity or legally incapable shall be taken up by a court of that Contracting State where the person concerned is resident. The judgment pronouncing a person to be of partial legal capacity or legally incapable shall be sent to a competent court of the Contracting State of which such person is a national.
4. The provisions of Paragraphs 1–3 of the present Article shall also be applicable to the reinstatement of legal capacity.

Article 25
Pronunciation of Persons to Be Missing or Deceased.
Establishment of Facts of Death

1. The judicial authorities competent in proceedings initiated for a person to be pronounced missing or deceased or for a fact of death to be established shall be those of the Contracting State of which the person concerned was a national when last known to be alive or, in the case of other persons, those of the Contracting State where they were last known to be resident.
2. The judicial authorities of each Contracting State may pronounce a national of another Contracting State or any other person who was resident on its territory to be missing or deceased or establish the fact of their death on the basis of a petition filed by those persons concerned and resident on its territory whose rights and interests are based on the legislation of such Contracting State.
3. When conducting proceedings initiated for the pronouncement of a person to be missing or deceased or for the establishment of a fact of death, the judicial authorities of the Contracting States shall apply the latter's own legislation.

Part III
Family Matters

Article 26
Conclusion of Marriages

Marriage terms for each of the future spouses shall be subject to the legislation of the Contracting State of which they are a national or, for stateless persons, the legislation of the Contracting State where they are domiciled. Furthermore, any obstacles to a marriage shall be subject to the legislation of the Contracting State where it is concluded.

Article 27
Relations Between Spouses

1. Personal and property relations between spouses shall be subject to the legislation of the Contracting State where the spouses jointly reside.
2. If one of the spouses is resident in one Contracting State, while another is resident in another Contracting State, but both spouses share the same nationality, their personal and property relations shall be subject to the legislation of that Contracting State of which they are nationals.
3. If one of the spouses is a national of one Contracting State and the other is a national of another Contracting State and should one of the spouses be resident in one Contracting State and the other be resident in another Contracting State, their personal and property relations shall be subject to the legislation of the Contracting State where they last had their joint residence.
4. If those persons specified in Paragraph 3 of the present Article did not have any joint residence in any of the Contracting States, the governing legislation shall be that of the Contracting State whose authority is hearing their case.
5. Those relations of spouses which concern their real property shall be subject to the legislation of the Contracting State where such real property is located.
6. The authorities competent in proceedings over spouses' personal and property relations shall be those of the Contracting State whose legislation is applicable by virtue of Paragraphs 1 – 3, 5 of the present Article.

Article 28
Dissolution of Marriages

1. Divorce cases shall be subject to the legislation of the Contracting State of which the spouses were nationals at the time when they filed an application for the dissolution of their marriage.
2. If one of the spouses is a national of one Contracting State, while the other is a national of another Contracting State, the governing legislation shall be that of the Contracting State whose authority is hearing the divorce case.

Article 29
Competence of Contracting States' Authorities

1. The judicial authorities competent in divorce proceedings in cases provided for in Paragraph 1 of Article 28 shall be those of the Contracting State of which the spouses were nationals at the time when they filed an application for the dissolution of their marriage. If both spouses were resident in another Contracting State at the time when they filed such application, the judicial authorities of the latter Contracting State shall likewise be competent.
2. The judicial authorities competent in divorce proceedings in those cases provided for by Paragraph 2 of Article 28 shall be those of the Contracting State where both spouses are resident. If one of the spouses is resident in one Contracting State, while the other is resident in another Contracting State, the judicial authorities of both Contracting States where the spouses are resident shall be competent to conduct proceedings for the dissolution of their marriage.

Article 30
Annulment of Marriages

1. Proceedings initiated to have a marriage annulled shall be subject to the same legislation of the corresponding Contracting State which was applicable pursuant to Article 26 to the conclusion of the marriage.
2. The competence of judicial authorities in proceedings to have a marriage annulled shall be determined in accordance with Article 27.

Article 31
Establishment and Challenging of Paternity or Maternity

Paternity and maternity shall be established and challenged according to the legislation of the Contracting State of which the child is a national by birth.

Article 32
Relations Between Parents and Children

1. The rights and obligations of parents and children, including the parental obligations to maintain children, shall be subject to the legislation of the Contracting State where they are jointly domiciled or, in the absence of such joint domicile, the mutual rights and obligations of the parents and their child shall be subject to the legislation of the Contracting State of which the child is a national.

Should a claimant so request, maintenance obligations shall be subject to the legislation of the Contracting State where the child is domiciled.

2. The maintenance obligations of adult children in favour of their parents and the maintenance obligations of other family members shall be subject to the legislation of the Contracting State where they shared a joint residence. If they had no such joint residence, such obligations shall be subject to the legislation of the Contracting State of which the claimant is a national.

3. The courts competent in proceedings concerning relations between parents and children shall be those of the Contracting State whose legislation is applicable by virtue of Paragraphs 1 and 2 of the present Article.

4. The enforcement of court judgments rendered in proceedings concerning the upbringing of children shall proceed in the manner prescribed by the legislation of the Contracting State where the child is resident.

5. The Contracting States shall assist one another in tracking down a respondent in proceedings for the recovery of alimony where there is reason to believe that the respondent is to be found in another Contracting State and a court has ordered a search for the respondent.

Article 33
Tutorship and Guardianship

1. Tutorship and guardianship shall be appointed or terminated according to the legislation of the Contracting State of which the ward covered by such tutorship or guardianship is a national.

2. Relations between a tutor or guardian and their ward shall be subject to the legislation of that Contracting State whose judicial authority has appointed the tutor or guardian.

3. The obligation to act as a tutor or guardian shall be imposed according to the legislation of the Contracting State of which the person to act in that capacity is a national.

4. The tutor or guardian of a person who is a national of one Contracting State shall be a national of another Contracting State if resident in the Contracting State where such tutorship or guardianship is to be exercised.

Article 34
Competence of Contracting States' Judicial Authorities
in Matters of Tutorship and Guardianship

The judicial authorities competent in proceedings for the appointment or termination of tutorship or guardianship shall be those of the Contracting State of which the ward covered by such tutorship or guardianship is a national, unless otherwise established hereunder.

Article 35
Procedure for Taking Measures by Way of Tutorship and Guardianship

1. Where necessary to take measures towards tutorship or guardianship in the interest of a national of one Contracting State who is domiciled or resident or whose property is located in another Contracting State, a judicial authority of the latter Contracting State shall promptly notify that judicial authority competent under Article 34 above accordingly.

2. In cases brooking no delay, a judicial authority of another Contracting State may itself initiate the necessary temporary measures under the latter's own legislation. In such case, it shall promptly notify that judicial authority competent under Article 34 above accordingly. Such measures shall continue in effect until that judicial authority specified in Article 34 above resolves otherwise.

Article 36
Procedure for Transfer of Tutorship or Guardianship

1. That judicial authority competent under Article 34 above may transfer tutorship or guardianship to a judicial authority of another Contracting State where the ward covered by such tutorship or guardianship is domiciled or resident or where such person's property is located. The tutorship or guardianship concerned shall then be deemed transferred with effect as from the moment when the judicial authority addressed accepts such tutorship or guardianship and notifies the requesting judicial authority accordingly.

2. That judicial authority accepting tutorship or guardianship pursuant to Paragraph 1 of the present Article shall exercise the same in the manner prescribed by the legislation of its own Contracting State.

Article 37
Adoptions

1. An adoption shall take effect or be rendered ineffective under the legislation of that Contracting State of which the foster parent was a national when filing an application for such adoption to become valid or be terminated.

2. The adoption of a child who is a national of another Contracting State shall take effect or be rendered ineffective subject to consent from such child's lawful representative and a competent government agency, as well as from the child himself if required under the legislation of the Contracting State of which the child is a national.

3. If a child is adopted by spouses one of whom is a national of one Contracting State and the other is a national of another Contracting State, the adoption shall take effect or be rendered ineffective on those terms as established by the legislation of both Contracting States.

4. The judicial authority competent in proceedings for an adoption to take effect or be rendered ineffective shall be that of the Contracting State of which the foster parent was a national when filing an application for such adoption to become valid or be terminated or, in the case specified in Paragraph 3 of the present Article, that of the Contracting State where the spouses have or had their last joint domicile or residence.

Part IV
Property Relations

Article 38
Ownership Rights

1. Ownership rights in real property shall be subject to the legislation of the Contracting State where it is located. The question of which property falls under the category of real property shall be determined according to the legislation of the Contracting State where it is located.

2. Ownership rights in vehicles liable to be recorded in state registers shall be subject to the legislation of the Contracting State where the judicial authority that has registered the corresponding vehicle is located.

3. Ownership rights or other rights *in rem* in property shall arise and be terminated under the legislation of the Contracting State where such property was located when that act or another circumstance which has resulted in such rights arising or being terminated took place.

4. Ownership rights or other rights *in rem* in any property constituting the subject matter of a transaction shall be subject to the legislation of the Contracting State where such transaction was executed, unless the parties agree otherwise.

Article 39
Form of Transaction

1. The form of a transaction shall be subject to the legislation of the Contracting State where it is executed.

2. The form of a transaction involving real property and related rights shall be subject to the legislation of the Contracting State where such real property is located.

Article 40
Power of Attorney

The form and validity period of a power of attorney shall be subject to the legislation of the Contracting State where such power of attorney is issued.

Article 41
Rights and Obligations of Parties to Transaction

The rights and obligations of the parties to a transaction shall be subject to the legislation of the Contracting State where such transaction is executed, unless the parties agree otherwise.

Article 42
Compensation for Damage

1. Any obligations to provide compensation for damage, other than those which arise out of or in connection with contracts or other legitimate acts, shall be subject to the legislation of the Contracting State where that act or another circumstance which has resulted in the claims of such damages took place.
2. If the tortfeasor and the victim are nationals of the same Contracting State, the legislation of this Contracting State shall be applied.
3. The court competent to deal with such matters as are specified in Paragraphs 1 and 2 of the present Article shall be that of the Contracting State where that act or other circumstance which has constituted grounds for the claims of damages took place. The aggrieved party may also have recourse to a court in the Contracting State where the respondent is resident.

Article 43
Statute of Limitations

Any period-of-limitation matters shall be subject to the legislation that is applicable to the respective legal relationship.

Part V
Succession

Article 44
Principal of Equality

The nationals of each of the Contracting States may inherit property or rights in the other Contracting States by law or testament on the same terms and to the same extent as its own nationals.

Article 45
Succession Rights

1. Other than in that case which is provided for in Paragraph 2 of the present Article, succession rights in property shall be subject to the legislation of that Contracting State where the testator was last domiciled.
2. Succession rights in real property shall be subject to the legislation of that Contracting State where such real property is located.

Article 46
Procedure for Decedent's Estate to Pass Onto the State

If the State is a successor under the legislation of a Contracting State which is applicable to a succession, the movable estate shall pass onto the Contracting State of which the testator was a national at the time of his demise, while the real estate shall pass onto that Contracting State where such property is located.

Article 47 Testament

A person's ability to draw up and revoke a testament, as well as the form of the testament and that of the act revoking the same, shall be subject to the legislation of that Contracting State where the testator was resident when executing the document. However, neither a testament nor an act revoking the same may be invalidated by reason of failure to observe the prescribed form if its form complies with the relevant requirements in effect in the Contracting State where the document was executed.

Article 48 Competence in Succession Matters

1. The judicial authorities competent in succession proceedings over movable estate shall be those of the Contracting State where the testator was resident at the time of his demise.
2. The judicial authorities competent in succession proceedings over real estate shall be those of the Contracting State where such property is located.
3. The provisions of Paragraphs 1 and 2 of the present Article shall also be applicable to disputes arising out of succession proceedings.

Article 49 Competence of Diplomatic Missions and Consular Offices in Succession Matters

The diplomatic missions or consular offices of each of the Contracting States may represent its nationals, if these are absent or have failed to appoint their representatives, in succession matters, including disputes, without a power of attorney (but shall not be entitled to renounce succession rights).

Article 50 Measures to Protect Estate

1. The judicial authorities of the Contracting States shall take the measures necessary under their legislation to protect that estate left on their territories by any nationals of the other Contracting States or to manage such estate.
2. The diplomatic mission or consular office of the Contracting State of which the successor is a national shall be promptly notified of those measures taken pursuant to Paragraph 1 of the present Article. Such mission or office may take part in the implementation of such measures.
3. Those measures taken in accordance with Paragraph 1 of the present Article may be modified, called off, or suspended upon an appropriate petition lodged by a judicial authority competent to conduct succession proceedings, or by a diplomatic mission or consular office.

Section III Recognition and Enforcement of Judgments

Article 51 Recognition and Enforcement of Judgments

On the terms and conditions herein contained, each of the Contracting States shall recognize and enforce the following judgments rendered in the other Contracting States:

- a) judgments rendered by judicial authorities in civil and family cases, including amicable settlements approved by courts in such cases and notarial acts in respect of monetary obligations ("judgments"); and
- b) judgments rendered by courts in criminal cases and ordering damages to be paid.

Article 52 **Recognition of Unenforceable Judgments**

1. Those judgments which have been rendered by any judicial authorities in any Contracting State and become *res judicata* which, by their nature, do not require enforcement shall be recognized in the other Contracting States without the need for any special further proceedings unless:

- a) a judicial authority in the Contracting State addressed has already rendered a judgment in the case and such judgment has the effect of *res judicata*; or
- b) in accordance with this Convention or, in those cases left uncovered hereunder, with the legislation of the Contracting State where the judgment is to be recognized, the matter falls within the exclusive competence of the judicial authorities of such Contracting State.

2. The provisions of Paragraph 1 of the present Article shall be also applicable to judgments concerning tutorship and guardianship, as well as divorces, and rendered by such judicial authorities as are competent to decide such matters under the legislation of the Contracting State where the corresponding judgments have been rendered.

Article 53 **Petitions for Enforcement of Judgments**

1. A petition for the enforcement of a judgment shall be filed with a competent court in the Contracting State where such judgment is to be executed. Such petition may also be lodged with the court of first instance that has rendered the judgment. Such court shall then resend the petition to that court competent to decide on the same.

2. Such petition shall be accompanied by:

- a) judgment or its certified copy, as well as an official document evidencing that the judgment has the effect of *res judicata* and is enforceable or that it is to be enforced before becoming *res judicata*, unless this follows from the judgment itself;
- b) document to confirm that the party who did not take part in the proceedings and against whom the judgment has been rendered was duly served timely summons to the court or, if procedurally incapable, was duly represented;
- c) document confirming a partial enforcement of the judgment by the time it was sent; and
- d) document attesting to the parties' agreement in matters subject to contractual jurisdiction.

3. A petition for the enforcement of a judgment, and accompanying documents shall be submitted together with their certified translations into the language of the Contracting State addressed or into Russian.

Article 54
Procedure for Recognition and Enforcement of Judgments

1. Such petitions for the recognition and enforcement of judgments as are provided for in Article 51 shall be considered by appropriate courts of the Contracting State where such enforcement is sought.
2. A court considering a petition for the recognition and enforcement of a judgment shall limit itself to determining that the relevant terms of this Convention have been observed. Subject to their observance, the court shall rule to proceed with the enforcement sought.
3. The enforcement procedure shall be subject to the legislation of the Contracting State where such enforcement is sought.

Article 55
Refusal of Recognition and Enforcement of Judgments

The recognition of a judgment pursuant to Article 52 and the declaration of enforceability may be refused if:

- a) the judgment does not have the effect of *res judicata* or is not enforceable under the legislation of the Contracting State of origin, unless such judgment is enforceable before becoming *res judicata*; or
- b) the respondent did not take part in the proceedings as a result of either the respondent itself or its duly authorized representative not having been duly served timely summons to the court; or
- c) a judgment has already been rendered and has the effect of *res judicata*, or a judgment rendered by a court in a third state has already been recognized, in the Contracting State addressed in a case involving the same parties, regarding the same subject matter, and based on the same cause of action, or a judicial authority in that Contracting State has already instituted proceedings in such case; or
- d) pursuant to this Convention or, in those cases not addressed hereunder, to the legislation of the Contracting State addressed, a judicial authority of that Contracting State has exclusive jurisdiction over the matter concerned; or
- e) there is no documented evidence to confirm that the parties have agreed on contractual jurisdiction in respect of the matter in question; or
- f) the period of limitation applicable to enforcement according to the legislation of the Contracting State addressed has expired.

Section IV
Legal Assistance and Legal Relations in Criminal Matters

Part I
Extradition

Article 56
Obligation of Extradition

1. The Contracting States hereby agree on the terms and conditions herein contained to extradite certain persons found on their territories to one another upon request for such persons to be held criminally liable or face the punishment already fixed for them in appropriate sentences.

2. Extradition procedures shall be invoked to hold a person criminally liable for such acts as are punishable - by imprisonment of at least one year or by stricter penalties – according to the legislation of both that Contracting State seeking such extradition and the Contracting State addressed.

3. Extradition procedures shall be invoked to administer the punishment already fixed for such acts as are punishable according to the legislation of both that Contracting State seeking such extradition and the Contracting State addressed where the person concerned has been sentenced to imprisonment of at least six months or to a stricter penalty.

Article 57 Refusal of Extradition

1. No extradition shall take place if:

- a) the person sought is a national of the Contracting State addressed;
- b) at the time when the extradition request was received, no criminal prosecution was possible according to the legislation of the Contracting State addressed or the sentence may not be executed due to the expiry of the period of limitation or for any other legal reason; or
- c) a sentence has already been passed in the Contracting State addressed to convict the person sought for the same crime or a resolution has already been issued and became *res judicata* in such Contracting State to dismiss the proceedings in the case; or
- d) the criminal prosecution is sought on private charges (upon the victim's request) according to the legislation of the Contracting State requesting such extradition or of the Contracting State addressed.

2. An extradition request may be refused if the crime for which the person in question is sought has been committed in the Contracting State addressed.

3. Should its extradition request be refused, the requesting Contracting State shall be advised of the reason for such refusal.

Article 58 Extradition Request

1. An extradition request shall indicate or contain the following:

- a) names of the requesting judicial authority and the judicial authority addressed;
- b) description of the facts of the corresponding act and the text of the requesting Contracting State's law qualifying such act as a crime, with an indication of the punishment due for such crime under the law;
- c) first name, middle name, surname, year of birth, nationality, and domicile or residence address of the person to be extradited, as well as, if possible, a description of such person's appearance, his photograph, fingerprints, and other personal data; and
- d) information about the extent of the damage caused by the crime.

2. An extradition request for criminal prosecution purposes shall be accompanied by a certified copy of the resolution ordering that the person concerned be taken into custody.

3. An extradition request for the purposes of enforcing a sentence shall be accompanied by a certified copy of such sentence bearing a note to confirm that it has come into force and by the text of that provision in the criminal law whereby such person has been convicted. If the convict has already served a part of the sentence, this shall also be reported.

4. Extradition requests and accompanying documents shall be executed in accordance with the requirements set out in Article 17.

Article 59 Additional Data

1. If an extradition request does not contain all of the required information, the Contracting State addressed may request additional data to be made available over a period of up to one month. Such period may be further extended by up to one month on the basis of an appropriate petition from the requesting Contracting State.

2. Should the requesting Contracting State fail to provide the additional data requested on time, the Contracting State addressed shall release the person taken into custody.

Article 60 Search for Person and Taking Into Custody

Immediately upon receiving an extradition request, the Contracting State addressed shall take the measures necessary to track down the person sought and take him into custody, except in cases where such extradition may not take place.

Article 61 Taking Into Custody or Detention Prior to Receipt of Extradition Request

1. On the basis of a special petition to such effect, the person sought may be taken into custody even before the receipt of an extradition request in his respect. Such petition shall refer to the resolution ordering that the person concerned be taken into custody or to the sentence having the effect of *res judicata*, and shall promise that the extradition request is forthcoming. Such petition requesting that a person be taken into custody before the receipt of an extradition request may be submitted by mail, telex, or fax.

2. The person concerned may also be detained without that petition provided for in Paragraph 1 of the present Article if there are statutory grounds for suspecting such person of having committed such crime in another Contracting State as will entail his extradition.

3. The other Contracting State shall be immediately advised of any such person having been taken into custody or detained before the receipt of an extradition request in his respect.

Article 61-1 Search for Person Prior to Receipt of Extradition Request

1. Upon being petitioned to do so, the Contracting States shall search for certain persons prior to receiving a request for their extradition where there is reason to believe that such persons may be found in the Contracting State thus petitioned.

2. Such search petitions shall be executed in accordance with the requirements of Article 7 above, and shall contain the fullest possible description of the person sought along with any other data making it possible to establish his whereabouts, as well as a request to take such person into custody along with a promise that an extradition request in his respect is forthcoming.

3. A search petition shall be accompanied by a certified copy of a resolution issued by a competent judicial authority and ordering that the person concerned be taken into custody or by a sentence having the effect of *res judicata*, information about the time still to be served thereby, and the wanted person's photograph and fingerprints, if any.

4. The Contracting State petitioning a search shall be immediately advised of the taking of the corresponding person into custody or of the other results of the search.

Article 61-2 Calculation of Time Spent in Custody

The time spent in custody by a person taken into custody by virtue of Articles 60, 61, and 61-1 shall be counted, should such person be extradited, towards the total period spent in custody in accordance with the legislation of the Contracting State to which the person has been extradited.

Article 62 Release of Person Detained or Taken Into Custody

1. That person taken into custody in accordance with Paragraph 1 of Articles 61 and 61-1 shall be released upon the receipt of the requesting Contracting State's notice requiring such person to be set free or if the Contracting State addressed fails to receive an extradition request complete with all accompanying documents required by Article 58 hereof within 40 days from the day on which the person concerned was taken into custody.

2. That person detained in accordance with Paragraph 2 of Article 61 shall be released unless a petition for such person to be taken into custody pursuant to Paragraph 1 of Article 61 is received within the statutory detention period.

Article 63 Deferral of Extradition

If a person requested to be extradited has been held criminally liable or convicted of other crime committed in the Contracting State addressed, the extradition of such person may be deferred pending the completion of such criminal prosecution, enforcement of the sentence, or release from punishment.

Article 64 Temporary Extradition

1. Where the deferral of extradition as provided for in Article 63 may entail the expiry of the period of limitation applicable to criminal prosecution or interfere with the investigation of the crime, the person requested to be extradited may be extradited temporarily.

2. The person that was extradited temporarily shall be returned upon the completion of the act making part of the criminal proceedings for which such person has been extradited, but at all times within three months from the extradition date. Where substantiated, such period, however, may be extended.

Article 65
Collision of Extradition Requests

Where extradition requests are received from several countries, the Contracting State addressed shall decide which request to grant at its own discretion.

Article 66
Restrictions on Criminal Prosecution of Extradited Persons

1. A person extradited may not – other than with the consent of the Contracting State addressed - be held criminally liable or punished for any crime committed before the extradition, unless such crime constitutes the reason for such extradition.
2. Nor may such person be extradited to any third country other than with the consent of the Contracting State addressed.
3. No such consent from the Contracting State addressed shall be necessary where the person extradited failed to leave the requesting Contracting State, or voluntarily returned thereto, within one month of the completion of the criminal proceedings or, if such person has been convicted, one month of the completion of the sentence or of the release from punishment. Such period shall not include the time during which the person extradited was unable to leave the requesting Contracting State other than through his own fault.

Article 67
Handover of Extradited Person

The Contracting State addressed shall notify the requesting Contracting State of the place and time when the extradition is to take place. If the requesting Contracting State fails to accept the person subject to extradition within 15 days of the extradition date thus scheduled, such person shall be released from custody.

Article 67-1
Repeat Detention or Taking Into Custody

A person's release by virtue of Paragraph 2 of Article 59, Paragraphs 1 and 2 of Article 62, and Article 67 shall not prevent such person from being detained and taken into custody again for the purpose of extradition if an appropriate extradition request has subsequently been received.

Article 68
Repeat Extradition

Should a person extradited evade from criminal prosecution or from the service of sentence and if it returns to the Contracting State addressed, such person shall be extradited on the basis of a new request, but without the need for those documents listed in Articles 58 and 59 to be provided.

Article 69
Notice Reporting Results of Criminal Proceedings

The Contracting States shall keep one another informed on the results of criminal proceedings against those persons extradited thereto. Copies of final judgments shall likewise be sent upon request.

Article 70
Transit Transportation

1. If petitioned by another Contracting State, a Contracting State shall authorize the transit transportation through its territory of those persons extradited to such other Contracting State or handed over thereto temporarily by a third country.
2. Petitions for such authorization shall be considered in accordance with the same procedure as extradition requests.
3. The Contracting State addressed shall authorize the transit transportation sought to be carried out in the manner such Contracting State itself finds the most appropriate.

Article 71
Expenses for Extradition and Transit Transportation

Those expenses incurred for extradition or temporary handover procedures shall be borne by that Contracting State where such expenses were suffered, while transit transportation costs shall be borne by the Contracting State that has requested such transportation.

Part II
Criminal Prosecution

Article 72
Obligation of Criminal Prosecution

1. If requested by another Contracting State, each Contracting State shall be obliged in accordance with its own legislation to carry out the criminal prosecution of its own nationals suspected of having committed a crime in the requesting Contracting State.
2. Should that crime which has prompted the initiation of criminal proceedings entail civil-law claims from its victims, such claims shall be considered as part of the proceedings provided that the claimants have filed applications for damages.

Article 73
Criminal Prosecution Request

1. A criminal prosecution request shall indicate or contain the following:
 - a) name of the requesting judicial authority;
 - b) description of the act that has prompted the criminal prosecution request;
 - c) time and place of such act, which shall be indicated as exactly as possible;
 - d) the text of that legislative provision of the requesting Contracting State qualifying the act as a crime, as well as the texts of other legislative provisions of material relevance to the proceedings;
 - e) first name, surname, and nationality of the suspect, and other personal information regarding the same;
 - f) applications filed by victims for the institution of the criminal proceedings concerned and for damages; and
 - g) indication of the extent of the damage caused by the crime.

Such request shall be accompanied by the briefs prepared and evidence gathered in the course of the relevant criminal proceedings that the requesting Contracting State has at its disposal.

2. Where the requesting Contracting State sends a file covering ongoing criminal proceedings, the Contracting State addressed shall continue the investigation of such matter in accordance with its own legislation. Each of the documents attached to the file shall be evidenced by an official stamp of the competent judicial authority of the requesting Contracting State.

3. A criminal prosecution request and accompanying documents shall be executed in accordance with the requirements of Article 18.

4. If an indictee was at the time when a criminal prosecution request was sent in custody in the requesting Contracting State, the indictee shall be taken to the Contracting State addressed.

Article 74 Notice of Results of Criminal Prosecution

The Contracting State addressed shall notify the requesting Contracting State of the final judgment. The requesting Contracting State shall also be sent a copy of the final judgment upon request.

Article 75 Consequences of Issue of Judgment

Where a Contracting State has been sent a criminal prosecution request by virtue of Article 72 after the sentence became *res judicata* or after a judicial authority in the Contracting State addressed issued another final judgment, no judicial authority in the requesting Contracting State may institute related criminal proceedings and that criminal case already opened shall be dismissed.

Article 76 Mitigating or Aggravating Circumstances

During the investigation of crimes and the hearing of criminal cases by the courts, each Contracting State shall take account of those mitigating and aggravating circumstances which are provided for by the legislation of the Contracting States, regardless of the Contracting State where such circumstances have occurred.

Article 76-1 Acknowledgement of Verdicts

When deciding whether a person should be pronounced an especially dangerous repeat offender, has committed crimes repeatedly, or breached the terms of a suspended sentence, postponement of a sentence, or parole, the judicial authorities of the Contracting States may acknowledge and act with due regard for those verdicts passed by the courts or tribunals of the former Soviet Union and its constituent republics, or the Contracting States' courts.

Article 77
Procedure for Dealing With Cases Falling Under the Jurisdiction
of Courts in Two or More Contracting States

Where a person or a group of persons are indicted on several counts falling within the jurisdiction of courts in two or more of the Contracting States, the court competent to deal with such cases shall be one in the Contracting State where the preliminary investigation has been completed. Such proceedings shall conform to the judicial procedures in effect in such Contracting State.

Part III
Special Provisions on Legal Assistance and
Legal Relations in Criminal Matters

Article 78
Transfer of Exhibits

1. The Contracting States shall provide one another upon request with:
 - a) such items as were used during a crime entailing the extradition of the criminal in accordance with this Convention, including instruments of the crime, property obtained as a result of the crime or as a reward for the crime, or assets exchanged for such property; and
 - b) items which may have the significance of evidence in a criminal case; they shall also be transferred where the criminal cannot be extradited as a result of the latter's demise or escape, or for other reasons.
2. Should the Contracting State addressed need those items listed in Article 78.1 above as evidence in a criminal case, their transfer may be delayed until the completion of the criminal proceedings in question.
3. Third-party rights in the items transferred shall remain valid. Following the completion of proceedings in a case, such items shall be returned, free of charge, to the Contracting State which has made them available.

Article 78-1
Temporary Transfer of Person Held in Custody or Serving Time

1. Should it be necessary to interrogate a person held in custody or serving time in another Contracting State as a witness or a victim, or to perform any other investigative action with the participation of such person, the Contracting State addressed may transfer such person, regardless of its nationality and upon a substantiated request from the General Procurator (Prosecutor) of the requesting Contracting State, to the latter temporarily, provided that the person concerned is held in custody and returned when due.
2. A request for such temporary transfer of a person described in Paragraph 1 of the present Article shall be executed in accordance with the requirements of Article 7, and shall indicate the time for which such person is required to be present in the requesting Contracting State.
3. No person described in Paragraph 1 of the present Article shall be subject to such temporary transfer:
 - a) other than upon his own consent; or
 - b) if required to be present during the preliminary investigation or hearing in the Contracting State addressed; or

- c) if the transfer may entail a breach of the time during which such person is required to remain in custody or in prison to serve the sentence.

4. Those persons described in Paragraph 1 of the present Article shall be entitled to those guarantees granted by Paragraph 1 of Article 9.

Article 79 Notices of Convictions and Criminal Records

1. Each Contracting State shall annually provide the other Contracting States with reports on *res judicata* convictions rendered by its courts against the nationals of the respective Contracting States together with the convicts' fingerprints.

2. Each Contracting State shall provide the other Contracting States, upon request and free of charge, with the criminal records of persons previously convicted by its courts if such persons are held criminally liable in the requesting Contracting State.

Article 80 Special Liaison Procedures

Contacts regarding extradition and criminal prosecution issues shall be maintained by the General Procurators (Prosecutors) of the Contracting States.

Contacts regarding the performance of procedural or other acts requiring authorization from a public prosecutor or a court shall be maintained by public prosecutors' offices in accordance with the procedures prescribed by the General Procurators (Prosecutors) of the Contracting States.

Section V Final Provisions

Article 81 Implementation Issues

Any issues arising out of or in connection with the implementation of this Convention shall be resolved by the competent authorities of the Contracting States by mutual agreement.

Article 82 Convention's Relationship with Other International Agreements

This Convention shall not affect the provisions of other international agreements to which the Contracting States are parties.

Article 83 Coming Into Force

1. This Convention shall be subject to ratification by its signatory nations. The instruments of ratification shall be surrendered for custody to the Government of the Belarus Republic, which shall act as the depositary of this Convention.

2. This Convention shall come into force on the 30th day after the day on which the third instrument of ratification is surrendered to the depositary. For each Contracting State which surrenders its instrument of ratification to the depositary after this Convention has already entered into force, this Convention shall take effect on the 30th day after the day on which its instrument of ratification was surrendered to the depositary.

Article 84
Term

1. This Convention shall be valid for five years after its effective date. Upon the expiry of that period, this Convention shall be automatically extended, each time for another five-year term.
2. Any Contracting State may withdraw from this Convention by written notice to the depositary 12 months prior to the expiry of the five-year term then in effect.

Article 85
Retroactive Force

This Convention shall also apply to those legal relations which have arisen before its effective date.

Article 86
Accession Procedure

After this Convention comes into force, other nations may accede hereto – subject to the consent of all of the Contracting States – by providing the depositary with appropriate accession documents. Each accession shall be deemed effective upon the expiry of 30 days after the day on which the depositary received the last notice of consent to such accession.

Article 87
Depositary's Obligations

The depositary shall promptly notify all of the signatories of this Convention and those nations having acceded hereto of the date on which each instrument of ratification or accession document is surrendered for custody, the Convention's effective date, and the depositary's receipt of other notices.

Done in the city of Minsk on 22 January 1993 in a single original copy in Russian. The original shall be on file in the Archives of the Government of the Belarus Republic, which shall send a certified copy of the Convention to each nation that is a party to this Convention.