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**LA CONVENTION RELATIVE A L'ENTRAIDE JUDICIAIRE ET AUX RELATIONS JUDICIAIRES EN
MATIÈRE CIVILE, FAMILIALE ET PÉNALE**

*Document d'information
préparé par la Délégation de la Fédération de Russie*

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**THE CONVENTION ON LEGAL ASSISTANCE AND LEGAL RELATIONS
IN CIVIL, FAMILY AND CRIMINAL MATTERS**

*Information Document
submitted by the Delegation of the Russian Federation*

*Document d'information No 1 d'avril 2005
à l'intention de la Vingtième session de juin 2005
sur la compétence, la reconnaissance et l'exécution des jugements étrangers
en matière civile et commerciale*

*Information Document No 1 of April 2005
for the attention of the Twentieth Session of June 2005
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in Civil and Commercial Matters*

**LA CONVENTION RELATIVE A L'ENTRAIDE JUDICIAIRE ET AUX RELATIONS
JUDICIAIRES EN MATIÈRE CIVILE, FAMILIALE ET PÉNALE**

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**THE CONVENTION ON LEGAL ASSISTANCE AND LEGAL RELATIONS
IN CIVIL, FAMILY AND CRIMINAL MATTERS**

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**The Convention on Legal Assistance and Legal Relations
in Civil, Family and Criminal Matters
(22 January 1993, Minsk, as amended on 28 March 1997)**

With the dissolution of the Soviet Union in 1991 the Russian Federation and the newly independent States, the former Soviet republics, currently Member States of the Commonwealth of Independent States (CIS), had to face the urgent matter of filling in the legal emptiness in the immense space inherited from the Soviet Union. The system of juridical relationship between the former Soviet republics had to be built anew on an absolutely new international legal basis.

The CIS Member States elaborated a comprehensive instrument designed to solve the problem - the Convention on legal assistance and legal relations in civil, family and criminal matters that was adopted in Minsk on 22 January 1993. The Minsk Convention became an essential step to creation of a legal basis for their joint activity and further integration.

The Convention was signed by Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine. It entered into force on 19 May 1994.

The Convention is not restricted to the CIS Member States. Its Article 86 prescribes that other States may join the Convention. In this case the consent of all the Contracting Parties is necessary and must be clearly expressed. Azerbaijan and Georgia acceded to the Convention in 1996 using that procedure. Among the former Soviet republics only Latvia, Lithuania and Estonia remained outside the Convention's framework preferring to regulate the matters of legal assistance on a bilateral basis.

The Convention is a comprehensive document regulating a wide spectrum of legal matters including service of judicial or extrajudicial documents and recognition and enforcement of civil and criminal judgments as well as cooperation between competent authorities in the field of civil, family and criminal law.

Within the scope of the Convention judicial and other competent authorities of the Contracting Parties communicate with each other through their Central Authorities (Ministries of Justice) which undertake to receive requests for legal assistance in civil, family and criminal matters coming from other Contracting Parties.

The Convention consists of a preamble and 87 Articles grouped in 5 parts:

- Section I - General provisions
- Section II - Legal relations in civil and family matters
- Section III - Recognition and execution of decisions
- Section IV - Legal assistance in criminal matters
- Section V - Final provisions

Section I regulates the general matters – legal protection and access to justice (Articles 1-3), legal assistance (Articles 4–19). According to Article 1 of the Convention the citizens of the Contracting Parties enjoy the same legal defense of their personal rights and rights *in rem*. They may apply to courts, prosecutor's offices and other competent authorities of other Contracting Parties having competence in civil, family and criminal matters.

The provisions of Article 2 state exemption from any payment, taxes or costs for the legal services rendered by the State addressed.

The range of legal assistance rendered by the CIS Member States is fixed in Article 6 of the Convention. It includes service and dispatch of documents, taking of evidence from litigants, witnesses and experts, making inspections, effecting prosecution, recognition and enforcement of judgments in civil matters, extradition, effecting other proceedings. This assistance is rendered by the judicial authorities of the requested Party on the basis of the letters rogatory coming from the requesting Party.

Article 7 of the Convention states that requests for legal assistance shall be made in writing and contain the designation of the requesting authority; the designation of the requested authority; the specification of the case in relation to which legal assistance is requested; names and surnames of persons relating to request for legal assistance, information of their citizenship, occupation and permanent or temporary residence (in case of legal persons, their names and addresses); names and addresses of the representatives of persons relating to the request; contents of the request.

In executing the request for legal assistance the requested authority applies its national legislation. However, upon request of the requesting authority, it may apply procedural rules of the requesting authority as far as they do not contradict the legislation of the requested Contracting Party.

The Minsk Convention guarantees immunity of witnesses and experts appearing on summons before the judicial authorities on the territory of the requesting Party. They may not be subjected to prosecution or any other restriction of their personal liberty.

It is important to mention that under the Convention the recognition of documents issued or certified in prescribed form and officially sealed by the competent authority or competent person in the territory of one Contracting Party do not require any form of authentication in the territories of the other Contracting Parties. The documents considered as official in the territory of one Contracting Party have the evidentiary force of official documents in the territories of the other Contracting Parties.

In spite of the fact that the Russian language stopped to be an official language in communication between the authorities of the former Soviet republics the Convention offers a simple and effective solution taking into consideration that the Russian language is still widespread in the territories of the newly independent States. The Convention stipulates that the requested judicial authority serves the documents according to the law of the State addressed on condition that the documents are written in the official language of the State addressed or in the Russian language or translated into these languages. Otherwise, the document may be served by a simple delivery upon the addressee who accepts it voluntarily. Besides the judicial authorities of the Contracting Parties may also use the Russian language in their relations.

The Convention empowers the diplomatic or consular agents to serve the documents upon their citizens and interrogate them without coercion.

Section II of the Convention regulates the matters of jurisdiction, legal relations in civil and family cases. The rule on choice of court is contained in Article 21 which prescribes that the courts of the Contracting Parties can also resolve the disputes if there is a written agreement between the parties to submit such disputes to these courts. Yet, the exclusive jurisdiction following from Article 20, paragraph 3, and other provisions of Parts II-V of Section II as well from the internal legislation of the Contracting Parties concerned, cannot be altered by an agreement of the parties. Article 20, paragraph 3, confers exclusive jurisdiction to resolve disputes about rights *in rem* in immovables upon courts of the State in which the immovable property is situated. The disputes arising out of contracts for carriage of goods, passengers and luggage will be heard by the courts of the State in which the contractor company has its seat. Parts III-V of Section II concern special issues in the sphere of family, property relations and succession.

The Convention defines that capacity of a natural person will be determined by the legislation of his or her citizenship. Capacity of a person without citizenship will be determined by the legislation of the country where he or she has permanent residence. And legal capacity of a juridical person will be determined by the law of the State according to which it was established.

The issues of recognition, execution and enforcement of judgments are regulated by the provisions contained in Section III. The Contracting Parties mutually recognise and enforce judgments of the judicial authorities on the territory of other Contracting Parties.

Article 51 states that judgments rendered by a competent judicial authority of the Contracting Parties in regard to civil and family matters including amicable settlements which have the effect of *res judicata* and notary's acts in respect to financial obligations shall be enforced on territory of other Contracting Parties. The judgments rendered in criminal cases concerning reimbursement of damage are also to be enforced. The procedure for enforcement of judgments is regulated by the law of the Contracting Party in which territory the judgment is to be enforced.

The grounds for refusal of recognition and enforcement are enumerated in Article 55:

- the judgment does not have the effect of *res judicata* or is not enforceable according to the legislation of the State of origin, except where the judgment is enforceable before becoming *res judicata*;
- the defendant did not participate in the proceedings as a result of the fact that he or his representative were not served with the summons in appropriate time and order;
- 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 on the same subject matter and on the same grounds or if there is a judgment of a third State which has been recognized; or proceedings in this case were earlier initiated in the State addressed;
- according to this Convention or to the national legislation of the State addressed its courts have exclusive jurisdiction;
- the document confirming a choice of court agreement between the parties is missing;
- the limitation period for filing the judgment for enforcement provided for by the legislation of the State addressed has expired.

Section IV of the Convention covers the issues of legal assistance in criminal matters. This part is subdivided into three sections that regulate the matters of extradition, criminal prosecution and special rules of legal assistance in criminal cases.

Section V of the Convention contains final provisions. Article 82 stipulates that the Convention does not derogate from other international treaties containing provisions on the matters governed by this Convention. In case of collision between the provisions of Minsk Convention and other international treaties in which the Contracting Parties participate the international treaties will prevail.

On 28 March 1997 in Moscow the Member States of the Commonwealth of Independent States (except Turkmenistan) signed the Protocol to the Minsk Convention. The Protocol simplified and liberalised the regime of relations between the judicial authorities of the Contracting Parties. Besides the Central Authorities the territorial and other authorities of the Contracting Parties became empowered to collaborate directly with their counterparts in other Contracting Parties. As a result, beginning from 2002 the functions of the

Ministry of Justice of the Russian Federation were delegated to the regional divisions of the Ministry. This innovation made it possible to simplify and expedite the procedure for transmission of documents and improve the organization of judicial assistance within the framework of the Convention on the whole. According to the Ministry of Justice of the Russian Federation about 60.000 documents are being processed within the framework of the Convention yearly.

On the whole the Minsk Convention is not only a comprehensive international treaty but also an extremely liberal and effective instrument used by the CIS Member States in the field of legal assistance. A decade of its application proved rationality of the Minsk regime, its optimal functionality on the large-scale regional level.