

Nevertheless, in the absence of any legislation in their respective territories making translations obligatory in such cases, the High Contracting Parties do not accept any obligation in this respect.

*Article 5.*

(a) In any case where documents have been served in accordance with the provisions of Article 3, the High Contracting Party, by whose Consular Officer the request for service was addressed, shall repay to the other High Contracting Party any charges and expenses which are payable under the law of the country of execution to the persons employed to effect service, and any charges and expenses incurred in effecting service in a special manner. These charges and expenses shall not exceed such as are usually allowed in the courts of that country.

(b) Repayment of these charges and expenses shall be claimed by the competent authority by whom the service has been effected from the Consular Officer by whom the request was addressed, when sending to him the certificate provided for in Article 3 (h).

(c) Except as provided above no fees of any description shall be payable by one High Contracting Party to the other in respect of the service of any documents.

III.—TAKING OF EVIDENCE.

*Article 6.*

(a) When a judicial authority in the territory of one of the High Contracting Parties requires that evidence should be taken in the territory of the other High Contracting Party, such evidence may be taken, whatever the nationality of the parties or witnesses may be, in any one of the ways prescribed in Article 7, 8, or 9.

(b) In Part III of this Convention, the expressions—

- (1) "Taking of evidence" shall be deemed to include the taking of the statements of a plaintiff, defendant, expert, witness, or any other person on oath or otherwise; the submission to a plaintiff, defendant, expert, witness, or any other person of any oath with regard to any legal proceedings; and the production, identification, and examination of documents, samples, or other objects.
- (2) "Witness" shall be deemed to include any person from whom any evidence, as defined above, is required to be taken.
- (3) "Country of origin" shall be deemed to mean the country by whose judicial authority the evidence is required, and "country of execution," the country in which the evidence is to be taken.

*Article 7.*

(a) The judicial authority of the country of origin may, in accordance with the provisions of the law of his country, address himself by means of a Letter of Request to the competent authority of the country of execution, requesting such authority to take the evidence.

(b) The Letter of Request shall be drawn up in the language of the country of execution, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Consular Officer acting for the country of origin or by an official or sworn translator of one of the two countries concerned. The Letter of Request shall state briefly the nature of the proceedings for which the evidence is required, the names and descriptions of the parties thereto, and the names, descriptions, and addresses of the witnesses. They shall also either (1) be accompanied by a list of interrogatories to be put to the witness or witnesses, or, as the case may be, by a description of the documents, samples, or other objects to be produced, identified, or examined, and a translation thereof, certified as correct in the manner heretofore provided; or (2) shall request the competent authority to allow such questions to be asked *viva voce* as the parties or their representatives shall desire to ask.

(c) Letters of Request shall be transmitted—

In England, by a Polish Consular Officer to the Senior Master of the Supreme Court of Judicature:

In Poland by a British Consular Officer to the Ministry of Justice.

In case the authority to whom any Letter of Request is transmitted is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (f) of this Article) of his own motion forward the Letter of Request to the competent authority of the country of execution.

(d) The competent authority of the country of execution shall give effect to the Letter of Request and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a

commission or order emanating from the authorities of his own country, except that if a wish that some special procedure should be followed is expressed in the Letter of Request, such special procedure shall be followed in so far as it is not incompatible with the law of the country of execution.

(e) The Consular Officer, by whom the Letter of Request is transmitted, shall, if he so desires, be informed of the date when and the place where the proceedings will take place, in order that he may inform the interested party or parties, who shall be permitted to be present in person or to be represented if they so desire.

(f) The execution of a Letter of Request which complies with the preceding provisions of this Article can only be refused—

- (1) If the authenticity of the Letter of Request is not established;
- (2) If, in the country of execution, the execution of the Letter of Request in question does not fall within the functions of the Judiciary;
- (3) If the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where a Letter of Request is not executed by the authority to whom it is addressed, the latter will at once inform the Consular Officer by whom it was transmitted, stating the grounds on which the execution of the Letter of Request has been refused, or, in the case provided for in Article 7 (c), the competent authority to whom it has been forwarded.

(h) When a Letter of Request has been executed, the competent authority to whom it was transmitted or forwarded shall send to the Consular Officer by whom it was transmitted the necessary documents establishing its execution.

*Article 8.*

(a) The judicial authority of the country of origin may, in the Letter of Request addressed to the competent authority of the country of execution, request such authority to appoint to take the evidence an individual specially designated in the Letter of Request.

A Consular Officer acting for the country of origin or any other suitable individual may be so designated.

(b) Where this procedure is adopted the provisions of paragraphs (b), (c), (f), (g), and (h) of Article 7 shall apply, but the following paragraph shall be substituted for paragraphs (d) and (e) of that Article.

(c) The competent authority of the country of execution shall give effect thereto and shall appoint the individual designated to take the evidence, unless such individual shall be unwilling so to act. In addition, if necessary, such authority shall make use of such compulsory powers as it possesses under its own law to secure the attendance of and the giving of evidence by the witnesses before the individual so appointed.

(d) The individual thus appointed shall have power to administer an oath, and any person giving false evidence before him shall be liable in the courts of the country of execution to the penalties provided by the law of that country for perjury.

(e) The evidence shall be taken in accordance with the law of the country of origin, provided such method is not contrary to the law of the country of execution, and the parties shall have the right to be present in person or to be represented by barristers or solicitors or by any other persons who are competent to appear before the courts of either the country of origin or of execution.

*Article 9.*

(a) The evidence may also be taken, without any request to or the intervention of the authorities of the country of execution, by an individual in that country directly appointed for the purpose by the court of the country of origin. A Consular Officer acting for the country of origin or any other suitable individual may be so appointed.

(b) An individual so appointed to take evidence may request the persons named by the court appointing him to appear before him and to give evidence. He may take all kinds of evidence which are not contrary to the law of the country of execution, and shall have power to administer an oath. The attendance and giving of evidence before any such individual shall be entirely voluntary and no measures of compulsion shall be employed.

(c) Requests to appear issued by such individual shall, unless the recipient is a subject or citizen of the High Contracting Party for whose judicial authority the evidence is required, be drawn up in the language of the country of execution or be accompanied by a translation into such language.