

N° 4111.

POLOGNE
ET TCHÉCOSLOVAQUIE

Convention concernant l'exécution
réciproque des titres exécutoires
et la réciprocité en matière de
faillites, et protocole additionnel.
Signés à Praha, le 10 février 1934.

POLAND
AND CZECHOSLOVAKIA

Convention concerning the Reci-
procal Execution of Enforceable
Decisions and Instruments and
Reciprocity in Bankruptcy Pro-
ceedings, and Additional Protocol.
Signed at Prague, February 10th,
1934.

¹ TRANSLATION.

No. 4111. — CONVENTION BETWEEN THE REPUBLIC OF POLAND AND THE REPUBLIC OF CZECHOSLOVAKIA CONCERNING THE RECIPROCAL EXECUTION OF ENFORCEABLE DECISIONS AND INSTRUMENTS AND RECIPROCITY IN BANKRUPTCY PROCEEDINGS. SIGNED AT PRAGUE, FEBRUARY 10TH, 1934.

THE CZECHOSLOVAK REPUBLIC and THE REPUBLIC OF POLAND, considering it expedient to make provision for the reciprocal recognition and execution of enforceable decisions and instruments and for reciprocity in bankruptcy proceedings, have decided to conclude a Convention for this purpose and have to this end appointed as their Plenipotentiaries :

THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC :

M. Bohdan PAVLŮ, Envoy Extraordinary and Minister Plenipotentiary ;
M. Antonin KOUKAL, Chief Adviser to the Ministry of Justice ;

THE PRESIDENT OF THE REPUBLIC OF POLAND :

M. Waclaw GRZYBOWSKI, Envoy Extraordinary and Minister Plenipotentiary ;
M. Juljusz RENCKI, Legal Adviser to the Ministry of Justice ;

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

PART I.

RECIPROCAL EXECUTION OF ENFORCEABLE DECISIONS AND INSTRUMENTS.

Article 1.

The enforceable decisions and instruments hereinafter mentioned, rendered or drawn in either of the contracting States and providing for the payment of a sum of money or for the handing-over or delivery of movable property, shall be recognised and executed in the territory of the other State in accordance with the provisions of the present Convention.

Article 2.

The following shall be deemed to be enforceable decisions or instruments for the purpose of the present Convention :

1. Judgments, including decisions having the same force as judgments (however described), rendered by civil courts, if, under the laws of the State in which they were rendered, they have acquired the force of *res judicata* and have become enforceable ;

¹ Translated by the Secretariat of the League of Nations, for information.

2. Orders of civil courts relating to costs which have acquired the force of *res judicata* and have become enforceable, if the decision in the action is enforceable under the present Convention, and also decisions, having acquired the force of *res judicata* and become enforceable, in proceedings instituted under the present Convention ;

3. Judicial compromises ;

4. Awards of arbitral tribunals and compromises reached before such tribunals, if in the territory in which they were rendered or concluded they have the force of judicial decisions or compromises, and if the agreement to resort to arbitration was concluded in writing and the arbitrator or arbitrators were designated either by the parties themselves or by a third person appointed by them for the purpose ; the choice of arbitrators or the appointment of a third party to make such choice must be confirmed in writing ; implied intention shall not be sufficient ;

5. Judicial documents or notarial instruments whereby the debtor has agreed to enforcement.

Article 3.

Should the decisions enumerated in paragraph 1 of the preceding Article have been delivered in contentious proceedings they shall not be recognised as enforceable except in the following cases :

1. If the action was tried by a court of the country in the territory of which the defendant was domiciled or, in the event of his not being domiciled in Czechoslovakia or Poland, by a court of the State in the territory of which he was resident. In the case of corporate bodies and companies which may be sued as such, the determining factor shall be the place at which their administration is carried on (registered offices) ;

2. If the court within whose jurisdiction the defendant industrial or commercial undertaking or the defendant branch is situated has given a decision in a dispute concerning that undertaking or branch ;

3. In the case of an action brought against a person responsible for the payment of a bill of exchange or cheque, when the case has been tried by the local court which, according to the law applied by the court making the decision, is the place of payment ;

4. If the defendant has agreed, in writing or by telegram, to submit to the jurisdiction of the court by which the decision was rendered ;

5. If, in the action which was the subject of the court's decision, a counterclaim was set up.

An exequatur shall be refused in respect of the decisions in question if, under the laws of the State in which enforcement is desired, another court has exclusive jurisdiction in the matter.

Article 4.

The above-mentioned decisions and instruments (Article 2) rendered or drawn in one State shall only be enforced in the territory of the other State if an exequatur has been granted in the latter State in the manner provided for in the present Convention.

Unless otherwise provided in the present Convention, the procedure in respect of the exequatur and actual enforcement shall be in accordance with the general provisions of the law of the State in which enforcement takes place. If, under such provisions, the court having jurisdiction in matters relating to the execution of a decision, and appeals against such execution, is the court by which the decision was pronounced, the court within whose jurisdiction enforcement takes place shall act in its stead.

Article 5.

The decision regarding the granting of an exequatur shall be rendered by the court on application by the plaintiff without summoning the parties to appear. The competent court shall be that ordinarily having jurisdiction over the debtor, or, otherwise, the court within the jurisdiction of which enforcement is desired.

Article 6.

The application shall be accompanied by all the necessary documents in support, and, in particular, by a complete copy of the decision or instrument to be enforced ; if the judgment to be enforced was rendered by default, the application shall also be accompanied by a certificate from the court which delivered the judgment to the effect that the summons or order whereby the proceedings were commenced was served on the defendant in person, and, in the case referred to in the second sentence of paragraph 1 of Article 7, by a certificate from such court to the effect that the conditions laid down in that provision are fulfilled. The annexed documents shall be accompanied by a translation in the official language of the State in which the application is made. The translation shall comply with the regulations in force in that State or shall be certified correct by a sworn translator of the State of origin.

The decisions mentioned in paragraphs 1 and 2 of Article 2 shall be accompanied by a certificate declaring that they are enforceable in the State in which they were rendered and have there acquired the force of *res judicata*.

Article 7.

The exequatur shall be refused :

1. If the defendant did not appear in the proceedings and the summons or order commencing the action was not served on him in person ; nevertheless, in regard to proceedings between nationals of the State in which judgment was rendered instituted in the territory of that State, the notice of proceedings shall be deemed satisfactory if served in accordance with the laws in force in the said State ;

2. If, as a result of any irregularity in the procedure, the defendant was prevented from taking part in the proceedings ;

3. If, in respect of the legal capacity, capacity to contract, capacity to sue or be sued or legal representation of a national of the State in which enforcement is to take place, the decision to be enforced is less favourable to such national than it would have been if rendered in accordance with the laws of that State ;

4. If the foreign decision or instrument conflicts with a decision having acquired the force of *res judicata*, rendered by the competent court on the same legal issue or cause of action ;

5. If enforcement would result in the recognition of a position at law or the satisfaction of a claim which, in the territory of the State in which enforcement is desired, would be contrary to the recognised principles of public policy and morality.

The above-mentioned grounds for refusing to recognise decisions or instruments as enforceable shall apply to all the decisions and instruments enumerated in Article 2, according to their nature.

In considering the grounds for refusal, the court shall not be bound by the findings or statements of fact in the decision or instrument concerned. In other respects the validity of the decision or instrument may not be called into question.

The decision concerning the granting of an exequatur shall be final as regards the question whether a foreign execution order is enforceable ; it shall be valid throughout the territory of the State in which it is rendered. The proceedings regarding the grant of an exequatur shall be

suspended if proceedings concerning the same legal issue or the same cause of action are instituted in a court of the State in which enforcement is desired.

Article 8.

In proceedings to secure an exequatur, the debtor may contest any of the assertions set out in the decision or instrument concerned, or oppose its enforcement if, under the laws in force in the territory of the State in which enforcement is desired, such action is permitted under the enforcement procedure.

Such action may also be taken while execution is in progress.

Article 9.

If, in the State of origin of the decision or instrument to be enforced, the suspension or annulment of execution has been ordered in the course of proceedings for its annulment or renewal, the State in which enforcement is desired shall, likewise, suspend or annul the proceedings for the granting of an exequatur or execution as the case may be.

In other cases, an order for the suspension or annulment of execution issued in the State of origin of the decision or instrument concerned shall affect neither the proceedings instituted in the other State on the basis of such decision or instrument for the purpose of obtaining an exequatur nor execution itself.

[PART II.

RECIPROCITY IN BANKRUPTCY PROCEEDINGS.

Article 10.

Bankruptcy proceedings in the territory of one of the contracting States shall not affect the property of the bankrupt in the territory of the other State.

Article 11.

Should bankruptcy proceedings be instituted in the territory of either of the contracting States in respect of the property of a national of the other State, the competent consular authority of the State of which the bankrupt is a national shall be advised without delay and a copy of the order for the opening of bankruptcy proceedings shall be forwarded to him.

The same rule shall apply if from the list of creditors — should such a list be submitted to the bankruptcy court — it appears that the creditors include nationals of the other contracting State who have not yet constituted themselves parties to the bankruptcy proceedings and do not reside in the territory of the State in which bankruptcy proceedings have been instituted.

In the cases referred to in the second paragraph of the present Article, notices of the institution of bankruptcy proceedings and all other notices and decisions issued or rendered in the course of such proceedings shall, if the laws of the State in which bankruptcy proceedings are instituted require their publication in the official journal, be likewise published without delay in the official journal of the other State. Such publication shall be regarded in the territory of the latter State as publication by the home authorities.

Article 12.

Nationals of either of the contracting States who, as creditors, are parties in bankruptcy proceedings in the other State shall, in respect of such proceedings, be treated on the same footing as nationals of that State.

Article 13.

In bankruptcy proceedings instituted in either State the consular authority of the other State shall have the right to represent those of his nationals who, as creditors, are interested in such proceedings and who, being absent, have not appointed other representatives.

PART III.

FINAL PROVISIONS.

Article 14.

The present Convention is concluded subject to ratification. The instruments of ratification shall be exchanged at Warsaw as soon as possible.

The Convention shall come into force one month after the exchange of the instruments of ratification and shall apply to claims arising after it comes into force.

The present Convention may be denounced by either State ; it shall, however, remain in force for a further period of two months after denunciation and, even on the expiry of the said period, its provisions shall continue to apply in proceedings to obtain the grant of an exequatur instituted before the Convention expired.

The present Convention is drawn up in the Czech and Polish languages, both texts being equally authentic.

In faith whereof the Plenipotentiaries have signed the Convention in duplicate and have thereto affixed their seals.

Done at Prague, this 10th day of February, 1934.

(L. S.) B. PAVLŮ.

(L. S.) Dr. KOUKAL.

(L. S.) W. GRZYBOWSKI.

Dr. Juljusz RENCKI.

ADDITIONAL PROTOCOL.

On signing the Convention concerning the reciprocal execution of enforceable decisions and instruments and reciprocity in bankruptcy proceedings, the Plenipotentiaries of the two Parties have jointly made the following declarations :

Ad Article 2, paragraphs 1 and 2 :

The term " civil courts " shall be deemed to include labour courts (in Czechoslovakia : Law of July 4th, 1931, Collection of Laws, No. 131 ; in Poland : Decree of the President of the Republic of March 22nd, 1928, Bulletin of Laws of the Polish Republic, No. 307, Section 350).

The two Parties reserve the right to extend the provisions of the said Convention to other special courts by agreement between the Ministries of Justice of the two States.

Ad Article 2, paragraph 2 :

The present Convention shall not apply to decisions regarding costs mentioned in Article 3 of the Convention of March 6th, 1925, with regard to the Settlement of Legal Relations in Civil, Penal and Non-Contentious Cases.

Ad Article 3 :

Both Parties agree not to recognise the validity of clauses in invoices purporting to constitute acceptance of a particular jurisdiction. The unqualified acceptance of an invoice mentioning a particular place as the place of payment or as the place where the debt may be legally contested, or of any other similar document, or, generally speaking, any mere implication of intention, cannot be considered a declaration whereby the parties have submitted to the jurisdiction of the court having given judgment in the matter.

Ad Article 4, paragraph 2 :

The vacations of the court shall in no way affect proceedings instituted under the present Convention by an application for the grant of an exequatur.

As regards the possibility of conservatory measures to ensure payment of the claim, either before or during the proceedings regarding the grant of an exequatur, as also the conditions and effects of such measures, the law applied shall be that of the State in which enforcement is sought.

Part II.

The term "bankruptcy" shall, for the purposes of the present Convention, include all bankruptcy proceedings, arrangements, and other similar proceedings, however they may be described.

The present Protocol shall form an integral part of the Convention concerning the reciprocal execution of enforceable decisions and instruments and reciprocity in bankruptcy proceedings.

In faith whereof the Plenipotentiaries have signed the present Additional Protocol.

Done at Prague, this 10th day of February, 1934.

B. PAVLŮ.
Dr. KOUKAL.
W. GRZYBOWSKI.
Dr. Juljusz RENCKI.