

N° 3276.

ITALIE ET SUISSE

Convention sur la reconnaissance et
l'exécution de décisions judiciaires.
Signée à Rome, le 3 janvier 1933.

ITALY AND SWITZERLAND

Convention regarding the Recogni-
tion and Enforcement of Judi-
cial Decisions. Signed at Rome,
January 3, 1933.

¹ TRADUCTION. — TRANSLATION.No. 3276. — CONVENTION ² BETWEEN ITALY AND SWITZERLAND,
REGARDING THE RECOGNITION AND ENFORCEMENT OF
JUDICIAL DECISIONS. SIGNED AT ROME, JANUARY 3, 1933.

French official text communicated by the Swiss Federal Council and by the Italian Minister for Foreign Affairs. The registration of this Convention took place October 18, 1933.

THE SWISS FEDERAL COUNCIL and HIS MAJESTY THE KING OF ITALY, being desirous of regulating the relations between the two countries as regards the recognition and enforcement of judgments, have resolved to conclude a Convention and have appointed for that purpose as their plenipotentiaries :

THE SWISS FEDERAL COUNCIL :

M. Georges WAGNIÈRE, Envoy Extraordinary and Minister Plenipotentiary ;

HIS MAJESTY THE KING OF ITALY :

H. E. Benito MUSSOLINI, Head of the Government, Minister, Secretary of State for Foreign Affairs ;

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

Article I.

Decisions of the Courts of one of the two States in civil and commercial matters shall have the force of *chose jugée* in the territory of the other State, if they fulfil the following conditions :

(1) The decision shall be that of a Court having jurisdiction in accordance with Article 2 of the present Convention, or, in default of conventional provisions, in accordance with the rules of international legal jurisdiction recognised by the law of the State in which the decision is invoked ;

(2) Recognition of the decision shall not be contrary to public order or to the principles of public law in the State in which the decision is invoked, and in particular shall not conflict with a decision already rendered in the same dispute by a Court of the said State ;

¹ Traduit par le Secrétariat de la Société des Nations, à titre d'information.

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

² The exchange of ratifications took place at Berne, September 6, 1933. Came into force October 6, 1933.

(3) The decision shall have become *chose jugée* by the law of the State in which it was rendered ;

(4) In the case of judgment by default, the writ of summons shall have been duly served on the party failing to appear or on his representative authorised to receive it. If service was to be effected in the territory of the State in which the decision is invoked, such service must have been made by process of reciprocal judicial assistance.

The procedure to be followed as regards recognition of *chose jugée* is determined by the law of the State applied to.

Article 2.

The jurisdiction of Courts of the State in which the decision was rendered shall be recognised within the meaning of Article 1 (1), if it be so provided by international convention, or in the following cases :

(1) When a defendant was domiciled in that State ;

(2) When by express convention having regard to definite disputes, a defendant had accepted the jurisdiction of the Court which rendered the decision, unless all parties were domiciled in the State in which the decision is invoked ;

It shall be likewise if a defendant has pleaded the merits of the dispute without reservation ;

(3) When a defendant having a commercial or industrial establishment, or a branch, in the territory of the State in which the decision was rendered, has been summoned in that State in respect of a dispute relating to the working of the establishment or branch ;

(4) In respect of counter-claims connected with the principal claim or with the defence put forward thereto ;

(5) In matters of personal status, capacity or family law concerning nationals of the country in which the decision was rendered ;

(6) In disputes in regard to succession between heirs of a national of the country in which the decision was rendered ;

(7) In an action *in rem* relating to immovable property in the State in which the decision was rendered.

Nevertheless, the provisions of Nos. 1-4 shall not affect disputes in which the law of the State applied to regards its own Courts or those of a third State as having exclusive jurisdiction.

Article 3.

Decisions rendered by Courts of one of the two States and fulfilling the conditions of Article 1 may, after having been declared enforceable, be enforced by process in the other State, or may therein form grounds for such formalities as entry or transfer in the public registers.

Only decisions having full executory force in the State in which they were rendered shall be declared enforceable in the State applied to.

The procedure to be observed shall be determined by the law of the State applied to.

Article 4.

The Courts of the State in which the decision is invoked, in their appreciation of the facts governing the jurisdiction of Courts of the other State, shall not be bound by the findings of the decision.

They shall not review the decision on the merits.

Article 5.

A party relying on a decision shall produce :

- (1) A copy of the decision fulfilling the necessary conditions as to authenticity ;
- (2) Documents to show that the decision has become *chose jugée* and, if necessary, that it is enforceable ;
- (3) The original or a certified true copy of the writ of summons served on the party failing to enter an appearance ;
- (4) A translation of the documents mentioned above, certified correct by a diplomatic or consular representative of one of the two States, unless the competent authority has granted exemption from such obligation.

Such documents, if drawn up, delivered or legalised by a Court of one of the High Contracting Parties or by the authorities referred to in Article 11 of the present Convention, shall require no legalisation for use in the territory of the other party, provided that they bear the seal or stamp of the Court or of the above authority.

Article 6.

A party granted free legal assistance in one of the two States shall *ipso facto* enjoy the same in proceedings with a view to recognition or enforcement, in the territory of the other State, of the decision rendered in his favour.

Article 7.

An arbitral award rendered in one of the two States and having in that State the same force as a judgment shall be recognised and declared enforceable in the other State, if it conform to the provisions of the foregoing articles in so far as such provisions are applicable.

It shall be likewise as regards agreements to terminate litigation.

Article 8.

The judicial authorities of one of the two States shall, on application by one of the parties, abstain from hearing disputes brought before it, when such disputes are already pending before a Court of the other State, provided that the latter Court have jurisdiction under the terms of the present Convention.

Article 9.

The present Convention shall not apply to orders for the deposit of security (*séquestre*) or other provisional measures, or to decisions rendered in criminal proceedings on the application of a private individual (*partie civile*), or to decisions in bankruptcy.

Article 10.

Interim or conservatory measures of protection provided by the law of one of the two countries may be applied for by the authorities of that country, whatever be the court having jurisdiction on the merits.

Article 11.

Decisions of non-judicial authorities in Switzerland charged with the organisation and supervision of guardianship shall for the purposes of the present Convention be deemed to be judicial decisions solely as regards Swiss nationals.

Article 12.

For the purposes of the present Convention the word " domicile " shall mean :

(1) For a person of full age and not under disability, an " emancipated " minor and a person of full age being subject to a *conseil* only for the accomplishment of certain acts, that place in one of the two States in which such person resides with intention to settle there, or, in default of any such place, that place in one of the two States in which his principal interests are situated ;

(2) For persons under paternal control or under guardianship, the domicile of the legal representative ;

(3) For a married woman, the domicile of her husband. Nevertheless, if the husband's domicile is unknown, or if the wife is judicially separated (*séparée de corps*) or authorised to have a separate domicile, the domicile of the wife shall be determined by No. (1) ;

(4) For limited companies, the place in which the head office is situated.

Article 13.

The present Convention shall not affect the provisions of agreements governing jurisdiction and enforcement of judgments in special matters.

Article 14.

Decisions as to costs and expenses referred to in Article 18, paragraphs 1 and 2, of the Convention¹ on Civil Procedure concluded at The Hague on July 17, 1905, and rendered in one of the two States, shall be declared enforceable in the territory of the other State on direct application by the party concerned.

Article 15.

The provisions of the present Convention shall apply whatever be the nationality of the parties.

Article 16.

The High Contracting Parties shall reserve the right to apply the present Convention jointly by exchange of notes to the Italian Colonies.

Article 17.

Any dispute that may arise between the High Contracting Parties as to the interpretation or application of the present Convention shall be settled in accordance with the provisions of the Treaty² of Conciliation and Judicial Settlement concluded on September 20, 1924, unless the High Contracting Parties agree to adopt another method of settlement.

¹ *British and Foreign State Papers*, Vol. 99, page 990.

² Vol. XXXIII, page 91, of this Series.

Article 18.

The present Convention shall be ratified. The ratifications thereof shall be exchanged at Berne as soon as possible.

This Convention shall come into force one month after the exchange of ratifications. It shall not apply to judicial decisions or arbitral awards that have become *choses jugées* before its coming into force, or to agreements to terminate proceedings concluded before that time.

This Convention may be denounced by either of the two States, but shall remain in force for one year after denunciation.

In faith whereof the Plenipotentiaries have signed the present Convention.

Done in duplicate at Rome this third day of January, 1933.

(L. S.) (Signed) WAGNIÈRE.

(L. S.) (Signed) MUSSOLINI.