

No. 5297

**BELGIUM
and
AUSTRIA**

Convention concerning the reciprocal recognition and enforcement of judicial decisions and officially authenticated documents relating to maintenance obligations. Signed at Vienna, on 25 October 1957

Official texts: French and German.

Registered by Belgium on 10 August 1960.

**BELGIQUE
et
AUTRICHE**

Convention sur la reconnaissance et l'exécution réciproques des décisions judiciaires et des actes authentiques en matière d'obligations alimentaires. Signée à Vienne, le 25 octobre 1957

Textes officiels français et allemand.

Enregistrée par la Belgique le 10 août 1960.

[TRANSLATION — TRADUCTION]

No. 5297. CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF AUSTRIA CONCERNING THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS AND OFFICIALLY AUTHENTICATED DOCUMENTS RELATING TO MAINTENANCE OBLIGATIONS. SIGNED AT VIENNA, ON 25 OCTOBER 1957

His Majesty the King of the Belgians and the Federal President of the Republic of Austria, desiring to provide on the basis of reciprocity for the recognition and the enforcement of judicial decisions rendered in respect of maintenance obligations, and for the enforcement of officially authenticated documents issued in such matters, have resolved to conclude a convention for this purpose and have appointed as their plenipotentiaries :

His Majesty the King of the Belgians :

M. Albert J. Herment, *Inspecteur Général* in the Ministry of Foreign Affairs and Foreign Trade, and

M. Robert Meuwis, *Chargé d'affaires a.i.* at Vienna;

The Federal President of the Republic of Austria :

Dr. Viktor Hoyer, *Ministerialrat* in the Federal Ministry of Justice, and
Dr. Rudolf Kirchschräger, *Legationsrat* at the Federal Chancellery, Department of Foreign Affairs,

who, having exchanged their full powers, found in good and due form, have agreed as follows :

Article 1

In this Convention :

- (a) " Decision " means any order emanating from a court to the extent to which it requires a person to make a payment or payments of a specified sum in performance of maintenance obligations arising from family relationship, blood relationship, marriage or affinity;
- (b) " Court " means any judicial authority of one of the High Contracting Parties, whatever its designation, which has jurisdiction to render decisions concerning the obligations referred to in the preceding paragraph;

¹ Came into force on 8 August 1960, the sixtieth day following the exchange of the instruments of ratification, in accordance with article 9. The exchange of the instruments of ratification took place at Brussels on 9 June 1960. This Convention is not applicable to the Territories of the Belgian Congo and Ruanda Urundi.

- (c) "Original court" means the court which has rendered the decision, and "requested court" means, in Austria, the court which is requested to enforce the decision, and in Belgium, the court which is requested to render the decision enforceable;
- (d) "Creditor" means the person in whose favour the decision has been rendered, and "debtor" means the person against whom the decision has been rendered.

Article 2

(1) Decisions rendered by a court of one of the High Contracting Parties shall be recognized in the territory of the other High Contracting Party if they satisfy the following conditions :

- (a) That the original court had jurisdiction by virtue of article 3 of the present Convention;
- (b) That the decision is enforceable in the State of the original court, notwithstanding that the remedies against it may not have been exhausted;
- (c) That the parties were duly represented or were duly declared in default, after having been served due notice of the proceedings; this condition shall not be deemed to have been complied with if, in the case of judgment by default, the defaulting party satisfies the requested court that it could not in fact have had knowledge of the proceedings in sufficient time to take part in them; service of summons effected in conformity with the provisions of article 3 of the International Convention on Civil Procedure concluded at The Hague on 17 July 1905¹/1 March 1954² shall be conclusive evidence of the fact that the party had such knowledge of the proceedings;
- (d) That the copy of the decision produced in the requested court satisfies all the requirements of authenticity prescribed by the laws of the State where the decision was rendered and that it bears the seal of the court which rendered it.

(2) Recognition shall, however, be denied :

- (a) If the decision is contrary to the public policy of the State of the requested court; or
- (b) If the same claim, based on the same cause of action and involving the same parties, has already been the subject of a decision on the merits in the State of the requested court, notwithstanding that the available remedies may not have been exhausted in that State; or
- (c) If the same claim, based on the same cause of action and involving the same parties, is pending in a court of the State where recognition is sought, and if such court was seized of the matter before the decision was rendered by the original court.

¹ De Martens, *Nouveau Recueil général de Traités*, troisième série, tome II, p. 243; League of Nations, *Treaty Series*, Vol. L, p. 180; Vol. LIV, p. 434; Vol. XCII, p. 420, and Vol. C, p. 265; and United Nations, *Treaty Series*, Vol. 216, p. 432, and Vol. 293, p. 388.

² United Nations, *Treaty Series*, Vol. 286, p. 265.

Article 3

The original court shall be deemed to have jurisdiction within the meaning of article 2, paragraph 1, sub-paragraph (a), if one of the following conditions is satisfied :

- (a) That at the time when proceedings were instituted, either the creditor or the debtor had his domicile or his habitual residence in the State where the decision was rendered, subject, however, to the provisions of article 7, paragraph 2;
- (b) That both the creditor and the debtor are nationals of such State;
- (c) That the debtor has submitted to the jurisdiction of the original court, either expressly or by entering a defence on the merits without contesting the jurisdiction of the court.

Article 4

(1) All decisions rendered by a Belgian court shall be enforceable in Austria provided that they satisfy the conditions laid down in article 2; all legal remedies provided for in Austrian law in such matters shall be available against the enforcement order.

(2) All decisions rendered by an Austrian court shall be enforceable in Belgium in pursuance of an exequatur granted by the competent Belgian court, which shall restrict its review to the points enumerated in article 2; all legal remedies provided by Belgian law in such matters, except opposition proceedings, shall be available against the judgment granting exequatur.

Article 5

(1) The application for a grant of exequatur, in Belgium, and the application for enforcement of the decision, in Austria, shall be presented and heard in the form and in accordance with rules prescribed by the laws of the State where enforcement is sought.

(2) The requesting party shall produce :

- (a) A copy of the decision;
- (b) Documentary evidence of the fact that the decision is enforceable;
- (c) In the case of a decision by default, a certified copy of the summons or any other documentary evidence of service on the defendant of a notice to appear.

(3) The documents to be produced shall be exempt from the requirement of certification; they shall be accompanied by a translation into one of the official languages of the requested State, which translation shall be certified by a sworn translator of one of the two States.

Article 6

(1) Officially authenticated documents issued by the courts, by the public agencies (*Jugendämter*) exercising guardianship of infants or by notaries public

which are enforceable in Austria shall, if they embody a settlement relating to maintenance concluded between the parties, be declared enforceable in Belgium. The exequatur shall be granted by the President of the court of first instance of the district in which enforcement is to be effected.

(2) The enforcement of officially authenticated documents embodying any such settlement, which were issued and are enforceable in Belgium shall be authorized in Austria by the competent court of first instance.

(3) The judicial authority seized of the matter shall restrict its review to verifying whether the documents satisfy the requirements of authenticity in the State where they were issued and whether they are not contrary to the public policy of its own country.

(4) The provisions of article 5, paragraph 3, shall apply to the documents to be produced.

(5) The legal remedies referred to in article 4, paragraphs 1 and 2, shall be available against the decision granting exequatur and the decision authorizing execution.

Article 7

(1) The present Convention shall be applicable to the decisions specified in article 1 and to the officially authenticated documents specified in article 6, irrespective of whether such decisions were rendered or such documents were issued before or after its entry into force.

(2) However, the Convention shall not be applicable to decisions which were rendered by default, before its entry into force, by a court having jurisdiction solely by virtue of the domicile or habitual residence of the creditor.

Article 8

The High Contracting Parties reserve the right to extend, by mutual consent, and by an exchange of notes, the application of the present Convention to the Belgian Congo and to the territory of Ruanda-Urundi. The notes shall fix the date at which the extension shall enter into force.

Article 9

(1) The present Convention shall be ratified. The exchange of the instruments of ratification shall take place at Brussels as soon as possible.

(2) The Convention shall enter into force on the sixtieth day following the exchange of the instruments of ratification.

Article 10

(1) Each of the High Contracting Parties may denounce the present Convention by written notification addressed to the other High Contracting Party.

The denunciation shall take effect after the expiration of one year from the date of which it was notified.

(2) The denunciation may be limited to the extension of the application of the Convention provided for in article 8.

Article 11

Any dispute which may arise between the High Contracting Parties concerning the interpretation or the application of the present Convention shall be settled through the diplomatic channel.

DONE in duplicate at Vienna this 25th October 1957, in the French and German languages, the two texts being equally authentic.

R. MEUWIS
J. HERMENT

Viktor HOYER
Rudolf KIRCHSCHLÄGER