

No. 9132

**HUNGARY
and
AUSTRIA**

**Treaty concerning matters of succession. Signed at Vienna,
on 9 April 1965**

Official texts: Hungarian and German.

Registered by Hungary on 6 June 1968.

**HONGRIE
et
AUTRICHE**

**Traité relatif aux questions de successions. Signé à Vienne,
le 9 avril 1965**

Textes officiels hongrois et allemand.

Enregistré par la Hongrie le 6 juin 1968.

[TRANSLATION — TRADUCTION]

No. 9132. TREATY¹ BETWEEN THE HUNGARIAN PEOPLE'S
REPUBLIC AND THE REPUBLIC OF AUSTRIA CON-
CERNING MATTERS OF SUCCESSION. SIGNED AT
VIENNA, ON 9 APRIL 1965

The Presidential Council of the Hungarian People's Republic and the Federal President of the Republic of Austria, desiring to regulate matters of succession between the two States, have agreed to conclude a treaty concerning matters of succession and have for that purpose appointed as their plenipotentiaries :

The Presidential Council of the Hungarian People's Republic :

Mr. János Péter, Minister for Foreign Affairs;

The Federal President of the Republic of Austria :

Dr. Bruno Kreisky, Federal Minister for Foreign Affairs;

Dr. Christian Broda, Federal Minister of Justice,

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

PART I

GENERAL PROVISIONS

Article 1

SCOPE OF THE TREATY

This Treaty shall apply to matters relating to succession to the estates of Austrian nationals who had their last place of domicile in the Hungarian People's Republic or left property there and to matters relating to succession to the estates of Hungarian nationals who had their last place of domicile in the Republic of Austria or left property there.

Article 2

HUNGARIAN NOTARIES PUBLIC

Provisions of the following articles which relate to the courts of the Contracting States shall also apply to notaries public of the Hungarian People's Republic in so far as they act in matters of succession.

¹ Came into force on 26 September 1967, sixty days after the exchange of the instruments of ratification, which took place at Budapest on 28 July 1967, in accordance with article 19 (1).

Article 3

PRINCIPLE OF EQUALITY IN MATTERS OF SUCCESSION

(1) Nationals of one Contracting State shall not, in the other Contracting State, be placed in a less favourable position than nationals of the latter Contracting State in respect of the right to make wills, contracts of inheritance or testamentary gifts or to acquire property *mortis causa*.

(2) For the purposes of this Treaty, the term “will” means the institution of an heir or the disposition of property by legacy and the term “acquisition of property *mortis causa*” means the acquisition of property through inheritance, through a legacy or through entitlement to a compulsory portion.

Article 4

TESTAMENTARY CAPACITY; FORM OF WILLS

(1) The capacity to make a will and the question of lack of intent shall be determined according to the law of the Contracting State of which the testator was a national at the time of making the will.

(2) The admissibility of wills as regards type and content shall also be determined according to the law specified in paragraph (1); where, however, a national of one Contracting State has made a will according to the law of the other Contracting State, the law of the latter State shall apply in respect of any property of the estate situated in the territory of that State.

(3) A will made by a national of one Contracting State shall be valid in both Contracting States as regards its form if it conforms

(a) To the law of the State in which the will was made, or

(b) To the law of the Contracting State of which the testator was a national at the time of making the will or at the time of his death, or to the law of the State in which the testator had, at either of those times, his place of domicile or habitual residence; the question whether the testator was domiciled at a particular place shall be determined according to the law in force at that place.

(4) Paragraphs (1)-(3) shall also apply to the revocation of wills.

(5) Paragraphs (1) and (2) shall apply, *mutatis mutandis*, to contracts of inheritance and testamentary gifts.

Article 5

JURISDICTION IN MATTERS OF SUCCESSION TO IMMOVABLE PROPERTY

Proceedings in matters of succession to immovable property shall be within the jurisdiction of the courts of the Contracting State in whose territory the property is situated.

Article 6

JURISDICTION IN MATTERS OF SUCCESSION TO MOVABLE PROPERTY

(1) Proceedings in matters of succession to movable property situated in the territory of the Contracting States shall be within the jurisdiction of the courts of the Contracting State of which the decedent was a national at the time of his death.

(2) Proceedings in matters of succession shall, however, be within the jurisdiction of the courts of the Contracting State in whose territory the decedent had his last place of domicile if

- (a) Any heir, compulsory heir or legatee domiciled in the Contracting State in which the decedent had his place of domicile at the time of his death, or in a third State, files a petition within six months after the decedent's death for conduct of the succession proceedings in the said Contracting State, and
- (b) No other heir, compulsory heir or legatee raises an objection, within three months after being duly notified by the court, to the conduct of the succession proceedings in the said Contracting State.

(3) Proceedings in matters of succession shall also be within the jurisdiction of the courts of the Contracting State in whose territory the decedent had his last place of domicile if at the time of his death the decedent was regarded by each of the Contracting States as its national.

Article 7

JURISDICTION IN LITIGATION RELATING TO SUCCESSION

The settlement of contested claims to an inheritance, a compulsory portion or a legacy in respect of the estate of a national of one of the Contracting States shall be within the jurisdiction of the courts of the Contracting State entitled to conduct succession proceedings pursuant to article 5 or article 6, provided that the action is instituted prior to the conclusion of the succession proceedings.

Article 8

APPLICABLE LAW

(1) Where proceedings in respect of the estate of a national of one Contracting State are, in accordance with article 5 or article 6, paragraph (2), conducted in the other Contracting State or where in such cases the proceedings referred to in article 7 are conducted in the latter Contracting State, the question of what persons are to be regarded as statutory heirs, what portions of the estate they are entitled to, and whether, and to what extent, entitlement exists to a compulsory portion shall be determined according to the law of the Contracting State of which the decedent was a national at the time of his death.

(2) Paragraph (1) shall not apply to the State's statutory right of succession to property of an estate.

Article 9

PROTECTION OF THE ESTATE

Where property forming part of the estate of a national of one Contracting State is situated in the other Contracting State, the courts shall, in accordance with their domestic law, take the necessary measures to ensure the protection and proper administration of such property and to prevent it from being diminished or otherwise harmed.

PART 2

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS
AND SETTLEMENTS*Article 10*

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

(1) Judgements rendered in matters of succession by a court of one Contracting State shall be recognized and enforced in the other Contracting State if they satisfy the following conditions :

- (a) The courts of the Contracting State in which the judgement was rendered had jurisdiction under article 5, article 6 or article 7;
- (b) The judgement has become final and, in cases where enforcement is applied for, is enforceable;
- (c) The interested parties were granted a lawful hearing and, in particular, were duly represented or found to be in default; this condition shall be deemed not to have been satisfied in the case of a judgement rendered in the absence

of an interested party, or without granting him a hearing, if he demonstrates to the court in which recognition or enforcement is sought that he could not in fact have learned of the proceedings in time to participate in them.

(2) Even where the conditions specified in paragraph (1) are satisfied, recognition or enforcement of a judgement shall be refused if :

- (a) The judgement violates the legal principles of the Contracting State in which recognition or enforcement is sought, or
- (b) The judgement was not based on the law which would have been applicable under this Treaty; this provision shall not, however, prevent recognition or enforcement in cases where the judgement would be in conformity with the law applicable under this Treaty if that law was in fact applied.

Article 11

ENFORCEMENT OF SETTLEMENTS

Settlements arrived at in matters of succession before a court of one Contracting State shall be enforced in the other Contracting State if they satisfy the conditions specified in article 10 in so far as those conditions are applicable to settlements.

Article 12

DOCUMENTS TO BE SUBMITTED

(1) A party applying for the recognition or enforcement in one Contracting State of a judgement rendered in the other Contracting State must submit the following documents :

- (a) A copy of the judgement, accompanied by a statement of grounds if such a statement is required under the law of the Contracting State in which the judgement was rendered; if a statement of grounds is not required under the said law, a certificate to that effect from the court which rendered the judgement must be submitted;
- (b) A certificate showing that the judgement has become final and, in cases where enforcement is applied for, is enforceable;
- (c) If the unsuccessful party did not participate in the proceedings, a certificate showing that he was served with the summons or order initiating the proceedings; this fact must be demonstrated by means of a certified copy of the relevant receipt or a judicial certificate attesting to the manner and date of service;
- (d) In the case of the documents referred to in sub-paragraphs (a) and (b) and, where appropriate, in sub-paragraph (c), the certified translation prescribed

in the Treaty of 9 April 1965 between the Hungarian People's Republic and the Republic of Austria concerning legal relations in civil cases and concerning official documents.

(2) Paragraph (1) shall also apply, *mutatis mutandis*, where enforcement is applied for on the basis of a settlement.

Article 13

ALTERNATIVE JURISDICTION

The provisions of articles 5, 6 and 7 shall not prevent the courts of the other Contracting State from having jurisdiction in cases where recognition or enforcement of a judgement is refused in pursuance of a final decision.

Article 14

PROCEDURE

The procedure for recognition or enforcement of a judgement or for enforcement of a settlement shall be determined by the law of the Contracting State in which recognition or enforcement is sought.

PART 3

FINAL PROVISIONS

Article 15

The provisions of this Treaty shall apply only in cases where the decedent died after the entry into force of the Treaty.

Article 16

(1) This Treaty shall not prevent a judgement which has been rendered in the territory of one Contracting State and to which the Treaty is not applicable from being recognized and enforced in the other Contracting State in accordance with the law in force in that State.

(2) Paragraph (1) shall also apply, *mutatis mutandis*, to the enforcement of settlements.

Article 17

This Treaty shall not affect the provisions of such other treaties as may be binding on one or both of the Contracting States at the time of the entry into force of this Treaty.

Article 18

This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Budapest.

Article 19

(1) This Treaty shall enter into force sixty days after the exchange of the instruments of ratification.

(2) The Treaty is concluded for a period of five years and shall remain in force thereafter unless one of the Contracting States gives notice to the other Contracting State one year before the expiry of the five-year period that it is denouncing the Treaty.

(3) If the Treaty is not denounced in accordance with paragraph (2), it shall remain in force indefinitely unless one of the Contracting States gives notice of denunciation to the other Contracting State, in which case it shall remain in force for one year after its denunciation.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States have signed this Treaty and have thereto affixed their seals.

DONE at Vienna on 9 April 1965, in duplicate in the Hungarian and German languages, both texts being equally authentic.

For the Hungarian
People's Republic :
PÉTER János

For the Republic
of Austria :
KREISKY
BRODA