

No. 9431

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## MULTILATERAL

**Convention concerning the powers of authorities and the law applicable in respect of the protection of infants. Opened for signature at The Hague on 5 October 1961**

*Authentic text : French.*

*Registered by the Netherlands on 26 February 1969.*

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## MULTILATÉRAL

**Convention concernant la compétence des autorités et la loi applicable en matière de protection des mineurs. Ouverte à la signature à La Haye le 5 octobre 1961**

*Texte authentique : français.*

*Enregistrée par les Pays-Bas le 26 février 1969.*

[TRANSLATION — TRADUCTION]

## CONVENTION <sup>1</sup> CONCERNING THE POWERS OF AUTHORITIES AND THE LAW APPLICABLE IN RESPECT OF THE PROTECTION OF INFANTS

The States signatory to the present Convention,

Desiring to establish common provisions on the powers of authorities and the law applicable in respect of the protection of infants,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions :

### Article 1

The judicial or administrative authorities of the State of the habitual residence of an infant have power, subject to the provisions of articles 3 and 4, and paragraph 3 of article 5 of the present Convention, to take measures directed to the protection of his person or property.

### Article 2

The authorities having power by virtue of the terms of article 1 shall take the measures provided by their domestic law.

<sup>1</sup> In accordance with article 20, the Convention came into force on 4 February 1969, i.e., the sixtieth day after the deposit of the third instrument of ratification with the Ministry of Foreign Affairs of the Netherlands, in respect of the following States on behalf of which the instruments of ratification were deposited on the dates indicated :

|              |                 |
|--------------|-----------------|
| Switzerland* | 9 December 1966 |
| Luxembourg** | 13 October 1967 |
| Portugal***  | 6 December 1968 |

\* The instrument of ratification by Switzerland contains the following declaration :

[*Translation-Traduction*] — Switzerland makes use of the reservation contemplated in article 15 of the Convention and will consider the judge empowered to decide on the nullity of the marriage, on divorce or on judicial separation competent, within the limits of articles 133, second paragraph, 156 and 157 of the Swiss Civil Code, to take measures for the protection of the person or property of an infant.

\*\* For reservations made on signature, see p. 159 of this volume.

\*\*\* In a note received by the Ministry of Foreign Affairs of the Netherlands on 31 January 1969, the Portuguese Government declared that it has decided to extend the application of the Convention to all territories of the Portuguese Republic. The said declaration, in accordance with the third paragraph of article 22 of the Convention, took effect on 1 April 1969.

In accordance with article 11 of the Convention, the Governments of the above-mentioned States notified the Ministry of Foreign Affairs of the Netherlands of the designation of the following authorities which can directly give and receive the information envisaged in that article :

Switzerland : Federal Department of Justice and Police, Justice Division (*Division de la Justice du Département fédéral de Justice et Police*).

Luxembourg : The Children's Court Magistrate at Luxembourg (*Kinderrechter te Luxemburg*).

Portugal : The Department of Services for the Protection of Infants.

That law shall determine the conditions for the initiation, modification and termination of the said measures. It shall also govern their effects both in respect of relations between the infant and the persons or institutions responsible for his care, and in respect of third persons.

### *Article 3*

A relationship subjecting the infant to authority, which arises directly from the domestic law of the State of the infant's nationality, shall be recognized in all the contracting States.

### *Article 4*

If the authorities of the State of the infant's nationality consider that the interests of the infant so require, they may, after having informed the authorities of the State of his habitual residence, take measures according to their own law for the protection of his person or property.

That law shall determine the conditions for the initiation, modification and termination of the said measures. It shall also govern their effects both in respect of relations between the infant and the persons or institutions responsible for his care, and in respect of third persons.

The application of the measures taken shall be assured by the authorities of the State of the infant's nationality.

The measures taken by virtue of the preceding paragraphs of the present article shall replace any measures which may have been taken by the authorities of the State where the infant has his habitual residence.

### *Article 5*

If the habitual residence of an infant is transferred from one contracting State to another, measures taken by the authorities of the State of the former habitual residence shall remain in force in so far as the authorities of the new habitual residence have not terminated or replaced them.

Measures taken by the authorities of the State of the former habitual residence shall be terminated or replaced only after previous notice to the said authorities.

In the case of change of residence of an infant who was under the protection of authorities of the State of his nationality, measures taken by them according to their domestic law shall remain in force in the State of the new habitual residence.

### *Article 6*

The authorities of the State of the infant's nationality may, in agreement with those of the State where he has his habitual residence or where he possesses property, entrust to them the putting into force of the measures taken.

The authorities of the State of the habitual residence of the infant may do the same with regard to the authorities of the State where the infant possesses property.

*Article 7*

The measures taken by the competent authorities by virtue of the preceding articles of the present Convention shall be recognized in all contracting States. However, if these measures involve acts of enforcement in a State other than that in which they have been taken, their recognition and enforcement shall be governed either by the domestic law of the country in which enforcement is sought, or by the relevant international conventions.

*Article 8*

Notwithstanding the provisions of articles 3 and 4, and paragraph 3 of article 5 of the present Convention, the authorities of the State of the infant's habitual residence may take measures of protection in so far as the infant is threatened by serious danger to his person or property.

The authorities of the other contracting States are not bound to recognize these measures.

*Article 9*

In all cases of urgency, the authorities of any contracting State in whose territory the infant or his property is, may take any necessary measures of protection.

When the authorities which are competent according to the present Convention shall have taken the steps demanded by the situation, measures taken theretofore under this article shall cease, subject to the continued effectiveness of action completed thereunder.

*Article 10*

In order to ensure the continuity of the measures applied to the infant, the authorities of a contracting State shall, as far as possible, not take measures with respect to him save after an exchange of views with the authorities of the other contracting States whose decisions are still in force.

*Article 11*

All authorities who have taken measures by virtue of the provisions of the present Convention shall without delay inform the authorities of the State of the infant's nationality of them and, where appropriate, those of the State of his habitual residence.

Each contracting State shall designate the authorities which can directly give and receive the information envisaged in the previous paragraph. It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands.

#### *Article 12*

For the purposes of the present Convention "infant" shall mean any person who has that status, in accordance with both the domestic law of the State of his nationality and that of his habitual residence.

#### *Article 13*

The present Convention shall apply to all infants who have their habitual residence in one of the contracting States.

Nevertheless any powers conferred by the present Convention on the authorities of the State of the infant's nationality shall be reserved to the contracting States.

Each contracting State may reserve the right to limit the application of the present Convention to infants who are nationals of one of the contracting States.

#### *Article 14*

For the purposes of the present Convention, if the domestic law of the infant's nationality consists of a non-unified system, "the domestic law of the State of the infant's nationality" and "authorities of the State of the infant's nationality," shall mean respectively the law and the authorities determined by the rules in force in that system and, failing any such rules, that law and those authorities<sup>1</sup> within such system with which the infant has the closest connexion.

#### *Article 15*

Each contracting State may reserve the jurisdiction of its authorities empowered to decide on a petition for annulment, dissolution or modification of the marital relationship of the parents of an infant, to take measures for the protection of his person or property.

The authorities of the other contracting States shall not be bound to recognize these measures.

#### *Article 16*

The application of the provisions of the present Convention can only be refused in the contracting States if such application is manifestly contrary to public policy.

<sup>1</sup> Note by the Permanent Bureau: The original text was: « ... rules, by that law within... ».

*Article 17*

The present Convention applies only to measures taken after its entry into force

The relationships subjecting the infant to authority which arise directly from the domestic law of the State of the infant's nationality shall be recognized from the date of entry into force of the Convention.

*Article 18*

In relations between the contracting States the present Convention replaces the Convention governing the *tutelle* of infants, signed at The Hague on 12 June, 1902.<sup>1</sup>

It shall not affect any provisions of other conventions binding the contracting States at the time of its entry into force.

*Article 19*

The present Convention is open to the signature of the States represented at the Ninth Session of the Hague Conference on Private International Law.

It shall be ratified and the instruments of ratification deposited with the Ministry of Foreign Affairs of The Netherlands.

*Article 20*

The present Convention shall enter into effect the sixtieth day after the deposit of the third instrument of ratification contemplated in article 19, paragraph 2.

As respects each signatory State subsequently ratifying the Convention, it shall enter into effect on the sixtieth day from the date of the deposit of its instrument of ratification.

*Article 21*

Any State not represented at the Ninth Session of the Hague Conference on Private International Law may adhere to the present Convention after it has entered into effect in virtue of article 20, paragraph 1. The instrument of adhesion shall be deposited with the Ministry of Foreign Affairs of The Netherlands.

The adhesion shall have effect only in the relations between the adhering State and contracting States which declare that they accept this adhesion. The acceptance shall be notified to the Ministry of Foreign Affairs of The Netherlands.

<sup>1</sup> *British and Foreign State Papers*. Vol. 95, p. 421.

Between the adhering State and the State which has declared that it accepts the adhesion the Convention shall enter into effect the sixtieth day after the notification mentioned in the preceding paragraph.

#### *Article 22*

At the moment of the signature, ratification or adhesion, each State may declare that the present Convention shall extend to all the territories which it represents on the international level, or to one or more of them. This declaration shall have effect at the moment of the entry into effect of the Convention for that State.

Thereafter, any extension of this nature shall be notified to the Ministry of Foreign Affairs of The Netherlands.

When the declaration of extension is made on the occasion of a signature or ratification, the Convention shall enter into effect for the territories indicated in conformity with the provisions of article 20. When the declaration of extension is made on the occasion of an adhesion, the Convention shall enter into effect for the territories indicated in conformity with the provisions of article 21.

#### *Article 23*

At the latest at the moment of ratification or adhesion, each State may make the reserves contemplated in articles 13, paragraph 3, and 15, paragraph 1 of this Convention. No other reserve shall be admitted.

When notifying an extension of the Convention in conformity with article 22, each State also may make these reserves with an effect limited to the territories, or some of them, indicated in the extension.

At any time, each contracting State may withdraw a reserve made. Such withdrawal shall be notified to the Ministry of Foreign Affairs of The Netherlands.

The effect of the reserve shall cease the sixtieth day after the notification mentioned in the preceding paragraph.

#### *Article 24*

The present Convention shall have a duration of five years starting from the date of its entry into effect in conformity with article 20, paragraph 1, even for States which have ratified it or adhered hereto subsequently.

The Convention shall be renewed tacitly every five years, in the absence of a denunciation.

The denunciation must be notified at least six months before the expiration of the five years period to the Ministry of Foreign Affairs of The Netherlands.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which shall have given notice of it. The Convention shall remain in force for the other contracting States.

*Article 25*

The Ministry of Foreign Affairs of The Netherlands shall give notice to the States indicated in article 19, as well as to States which will have adhered in conformity with the provisions of article 21, of :

- (a) notifications dealt with in article 11, paragraph 2 ;
- (b) signatures and ratifications dealt with in article 19 ;
- (c) the date at which this Convention will enter into effect in conformity with the provisions of article 20, paragraph 1 ;
- (d) adhesions and acceptances dealt with in article 21 and the date at which they will take effect ;
- (e) extensions dealt with in article 22 and the date at which they will take effect ;
- (f) reserves and withdrawals of reserves dealt with in article 23 ;
- (g) denunciations dealt with in article 24, paragraph 3.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed the present Convention.

DONE at The Hague, on 5 October 1961, in a single copy, which shall be deposited in the archives of the Government of The Netherlands. A certified true copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth Session of the Hague Conference on Private International Law.

For the Federal Republic of Germany,

(subject to ratification)

Hans ARNOLD

22.X.68

For Austria :

Claus WINTERSTEIN

22.X.68

For Belgium :

For Denmark :



For Spain :

For Finland :

For France :

The Hague, 29 November 1961  
Étienne DE CROUY  
(subject to the reservations contemplated in article 15)

For Greece :

For Italy :

R. GIUSTINIANI  
15 December 1961

For Japan :

For Luxembourg :

P. SCHULTE  
3 January 1963  
(subject to the reservations contemplated in article 13, third paragraph, and article 15, first paragraph <sup>1</sup>)

For Norway :

For the Netherlands :

H. R. VAN HOUTEN  
30 November 1962

For Portugal :

Alvaro BRILHANTE LABORINHO  
29 Sept. 1967

<sup>1</sup> In a note of 3 January 1963 addressed by the Embassy of the Grand Duchy of Luxembourg at The Hague to the Ministry of Foreign Affairs of the Netherlands, these reserves were specified as follows :

(1) In accordance with article 13, third paragraph, the State of Luxembourg reserves the right to limit the application of the present Convention to infants who are nationals of one of the contracting States. »

(2) In accordance with article 15, first paragraph, the State of Luxembourg reserves the jurisdiction of its authorities empowered to decide on a petition for annulment, dissolution or modification of the marital relationship of the parents of an infant, to take measures for the protection of his person or property.

For the United Kingdom of Great Britain and Northern Ireland :

For Sweden :

For Switzerland :

Jean MERMINOD  
18.XI.1964

For Yugoslavia :

Rade LUKIĆ  
(subject to ratification)

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