

No. 20324

FEDERAL REPUBLIC OF GERMANY
and
ISRAEL

Treaty concerning the reciprocal recognition and enforcement of judicial decisions in civil and commercial matters (with exchange of letters). Signed at Jerusalem on 20 July 1977

Authentic texts of the Treaty: German and Hebrew.

Authentic text of the Exchange of letters: German.

Registered by the Federal Republic of Germany on 7 August 1981.

RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
ISRAËL

Traité relatif à la reconnaissance et à l'exécution réciproques des jugements en matière civile et commerciale (avec échange de lettres). Signé à Jérusalem le 20 juillet 1977

Textes authentiques de la Convention : allemand et hébreu.

Texte authentique de l'Échange de lettres : allemand.

Enregistré par la République fédérale d'Allemagne le 7 août 1981.

[TRANSLATION — TRADUCTION]

**TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND
THE STATE OF ISRAEL CONCERNING THE RECIPROCAL REC-
OGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS IN
CIVIL AND COMMERCIAL MATTERS**

The Federal Republic of Germany and the State of Israel,
Desiring to ensure the recognition and enforcement of judicial decisions in civil
and commercial matters on the basis of reciprocity,
Have agreed as follows:

SECTION ONE

PRINCIPLE OF RECOGNITION AND ENFORCEMENT

Article 1. In civil and commercial matters, decisions of the courts of either Contracting State shall be recognized and enforced in the other Contracting State under the conditions prescribed in this Treaty.

Article 2. (1) For the purposes of this Treaty, the term “decision” shall be understood to refer to all judicial decisions, regardless of the name given to them (judgements, orders, writs of execution) and regardless of whether they have been rendered in adversary or non-adversary proceedings; judicial settlements shall also be included herein. Exceptions shall, however, be constituted by those decisions in non-adversary cases which are issued in a unilateral proceeding.

(2) In particular, the following shall also be judicial decisions:

1. Orders issued by a *Rechtspfleger* (judicial administrator) whereby the amount of the maintenance to be paid for a child is established, orders issued by a court clerk or a judicial administrator whereby the amount of costs is fixed subsequently and writs of execution;
2. Decisions of a register in default proceedings, in a documents proceeding (*Urkundenprozess*), in cost cases and in matters relating to labour law.

SECTION TWO

RECOGNITION OF JUDICIAL DECISIONS

Article 3. Decisions which have been rendered by the courts of either State in civil or commercial matters concerning the claims of the Parties and which can no longer be opposed by means of ordinary legal remedies shall be recognized in the other State.

Article 4. (1) The provisions of this Treaty shall not apply:

1. To decisions in matrimonial matters or other matters relating to family status and to decisions relating to the personal status or contractual capacity of persons, as well as to decisions in matters relating to marital property law;

¹ Came into force on 1 January 1981, i.e., 30 days after the exchange of the instruments of ratification, which took place at Bonn on 2 December 1980, in accordance with article 30.

2. To decisions relating to the law of succession;
3. To decisions which have been rendered in a judicial criminal proceeding with regard to claims arising out of a legal relationship under civil and commercial law;
4. To decisions rendered in matters relating to bankruptcy, composition or similar proceedings, including decisions which in such a proceeding adjudicate the validity of legal acts *vis-à-vis* creditors;
5. To decisions in social security matters;
6. To decisions in matters of nuclear liability;
7. To interim orders or arrangements and to writs of attachment (*Arreste*).

(2) Notwithstanding the provisions of paragraph (1), this Treaty shall apply to decisions in matters relating to maintenance obligations.

Article 5. (1) Recognition shall not be refused unless:

1. The courts of the State in which the decision was rendered are not competent within the meaning of article 7 or on the basis of an agreement to which both Contracting States are parties;
2. It is contrary to the public policy of the State in which recognition is requested;
3. The decision is based on fraudulent activities during the proceedings;
4. Recognition of the decision is likely to damage the sovereign rights or security of the State in which recognition is requested;
5. A proceeding between the same Parties and concerning the same subject matter is pending before a court in the State in which recognition is requested and the said court was the one before which the matter was first brought;
6. A decision which cannot be opposed by means of an ordinary legal remedy and which was rendered between the same Parties and concerning the same subject matter already exists in the State in which recognition is requested.

(2) In the case of a decision by default, recognition of the decision may also be refused if:

1. The document used for instituting the proceedings
 - (a) Was not duly served upon the defendant according to the laws of the State in which the decision was rendered, or
 - (b) Was served upon the defendant in violation of an international agreement, or
 - (c) Was not served upon the defendant early enough to enable him to defend himself;
2. The defendant proves that he had no opportunity to defend himself because, through no fault of his own, the document used for instituting the proceedings either had not been brought to his attention at all or had not been brought to his attention early enough.

Article 6. (1) Recognition shall not be refused solely on the ground that the court which rendered the decision, observing the rules of its own private international law, applied laws other than those which would have been applicable under the private international law of the State in which recognition is requested.

(2) Nevertheless, recognition may be refused on the ground specified in paragraph (1) if the decision is based on the determination of a legal relationship under matrimonial or other family law, of legal or contractual capacity, of legal representa-

tion or of a relationship under the law of succession. The same shall apply to a decision based on the determination of the legal or contractual capacity of a body corporate, a company or an association, in so far as the said body corporate, company or association is established in accordance with the law of the State in which recognition is requested and has its statutory or actual headquarters or principal establishment in that State. The decision shall, however, be recognized where it would also be found justified if the private international law of the State in which recognition is requested were applied.

Article 7. (1) The courts of the State in which the decision was rendered shall be recognized as competent for the purposes of article 5, paragraph (1), subparagraph 1:

1. If, at the time of institution of the proceedings, the defendant had his domicile or his habitual residence in the State in which the decision was rendered or, in the case of a body corporate, a company or an association, had its statutory or actual headquarters or principal establishment in that State;
2. If the defendant had a business establishment or branch establishment in the State in which the decision was rendered and suit was brought against the defendant in connection with claims arising out of the operation of the said establishment or branch establishment;
3. If the defendant has submitted, by agreement, in respect of a specific legal relationship, to the jurisdiction of the courts of the State in which the decision was rendered, unless such agreement is contrary to the law of the State in which the decision is relied upon; an agreement within the meaning of this provision shall be deemed to exist only if one Party has made a declaration in writing which has been accepted by the opposing Party, or if an agreement arrived at orally has been confirmed in writing by one Party and such confirmation has not been contested by the opposing Party;
4. If the subject matter of the action was a claim for maintenance and if at the time of institution of the proceedings the person entitled to maintenance had his domicile or habitual residence in the State in which the decision was rendered, or if competence was deemed to exist on the ground of a connection with a matrimonial matter or a matter of family status;
5. If the action was based on a prohibited act or on an act assimilated to a prohibited act under the law of the State in which the decision was rendered, if the act was committed in the territory of the State in which the decision was rendered and if the perpetrator of the damaging act was resident in that State when committing it;
6. If the action is based on a prohibited act in business activity or on the violation of a patent, a registered design or a trade-mark, of a law for the protection of foreign currency, of a commercial sample or model or of a copyright in the State in which the decision was rendered;
7. If the subject matter of the action was a right in immovable property or a claim arising out of a right in such property and the immovable property in question is situated in the State in which the decision was rendered;
8. If the defendant had neither his domicile nor his habitual residence in either of the two States but, at the time of institution of the proceedings, owned property in the State in which the decision was rendered;

9. If the proceeding concerned a counter-action in which the counter-claim had a legal connection with the action initiated in the principal proceeding and if the courts of the State in which the decision was rendered are recognized within the meaning of this Treaty to be competent to adjudicate the action initiated in the principal proceedings;
10. If the subject matter of the action was a claim for compensation or restitution on the ground that a decision of a court of the other State had been enforced and the said decision had been set aside or modified in that State;
11. If the defendant submitted a defence on the merits of the case before the court of the State in which the decision was rendered, even though the said court did not otherwise possess jurisdiction which would have been recognized under this Treaty; this shall not apply, however, if the defendant stated, before submitting a defence on the merits of the case, that he was appearing in the proceedings solely with reference to property situated in the State whose court was hearing the case.
 - (2) However, the courts of the State in which the decision was rendered shall not be recognized as competent if sole jurisdiction in the action which gave rise to the decision rests in the courts of the State in which the decision is relied upon.

Article 8. (1) Where a decision rendered in either State is relied upon in the other State, it may be examined only to determine whether any of the grounds for refusal specified in article 5 or in article 6, paragraph (2), is present.

(2) In determining whether the court of the State in which the decision was rendered is competent (article 5, paragraph (1), sub-paragraph 1), the court of the State in which the decision is relied upon shall be bound by the findings of fact and of law on the basis of which the court determined its jurisdiction.

(3) The decision shall not be examined except as indicated above.

Article 9. (1) Decisions rendered in either Contracting State shall be recognized in the other Contracting State without requiring any special procedure.

(2) Where the question whether a decision is to be recognized is itself the subject matter of a dispute, each Party which relies upon such recognition may, in the procedure pursuant to section three, apply for a finding that the decision is to be recognized.

(3) Where application is made for recognition in a legal dispute before the court of a Contracting State whose decision depends on such recognition, the said court may rule on the recognition.

SECTION THREE

I. ENFORCEMENT OF FINAL DECISIONS AND JUDICIAL SETTLEMENTS

Article 10. Enforcement of decisions which have been rendered by the courts of either State and to which this Treaty is applicable shall be authorized in the other State, if

1. They are enforceable in the State in which the decision was rendered;
2. They are to be recognized in the State in which enforcement is to be carried out (the State of enforcement).

Article 11. The procedure for authorization of enforcement and the enforcement itself shall, unless otherwise provided in this Treaty, be governed by the law of the State of enforcement.

Article 12. If the Party applying for enforcement was permitted to sue *in forma pauperis* in the State in which the decision was rendered, he shall *ipso facto* enjoy the same right under the regulations of the State of enforcement, both in the proceedings for the authorization of enforcement and in the enforcement proceedings.

Article 13. Authorization of enforcement may be applied for by any person entitled to avail himself of the decision in the State in which it was rendered.

Article 14. (1) Application for authorization of enforcement shall be submitted:

1. In the Federal Republic of Germany, to the *Landgericht*;
2. In the State of Israel, to the District Court at Jerusalem, which shall have sole competence both as to subject matter and as to locality.

(2) Competence as to locality shall be possessed in the Federal Republic of Germany by the *Landgericht* in whose district the debtor is domiciled or, failing that, owns property or in whose district the enforcement is to be carried out.

(3) Either Contracting Party may, by means of a declaration made to the other Contracting Party, designate another court as competent for the purposes of paragraph (1).

Article 15. (1) The Party applying for authorization of enforcement must produce:

1. A certified copy of the decision, prepared by the court of the State in which the decision was rendered;
2. Proof that the decision has become final;
3. Proof that the decision is enforceable under the law of the State in which it was rendered;
4. Where the applicant is not the creditor named in the decision, proof of the applicant's entitlement;
5. The original or a certified true copy of the certificate of service or of any other document showing that the decision has been served on the party against whom it is to be enforced;
6. The original or a certified true copy of the document establishing that the complaint, summons or other document used for instituting the proceedings has been served on the defendant in accordance with the law of the State in which the decision was rendered, in so far as the defendant did not enter a defence on the merits of the case in the action in which the decision was rendered;
7. A translation of the aforementioned documents into the language or one of the languages of the State of enforcement, which must be certified correct by an officially appointed or sworn translator or by a notary authorized thereto.

(2) The documents specified in the preceding paragraph shall require no legalization and, subject to the provisions of paragraph (1), sub-paragraph 7, no similar formality.

Article 16. (1) In ruling on the application for authorization of enforcement, the court applied to shall confine itself to determining whether the documents required under article 15 have been produced and whether any of the grounds for refusal specified in article 5 or in article 6, paragraph (2), is present.

(2) The debtor may also adduce against the authorization of enforcement the argument that he is entitled to object to the application itself, on grounds which did not arise until after the decision was rendered. The proceedings in which the objections may be made shall be governed by the law of the State in which the enforcement is to be carried out. The decision shall not be examined except as indicated above.

(3) The decision on the application for authorization of enforcement shall be deferred if the debtor proves that he has been granted a stay of execution of the decision and that he has fulfilled the necessary conditions for such a stay.

Article 17. The court may also authorize enforcement for only part of the decision:

1. If the decision relates to one or more claims and the applicant party seeks authorization of enforcement in respect of only one or several claims or in respect of part of the claim;
2. If the decision relates to one or more claims and the application is valid in respect of only one or several claims or in respect of only part of the claim.

Article 18. If enforcement of the decision is authorized, the court shall, where necessary, also prescribe such measures as are needed to ensure execution of the decision.

Article 19. The enforcement of judicial settlements shall be governed by articles 10 to 18; however, the provisions of article 15, paragraph (1), sub-paragraphs 2 and 6, shall not apply.

II. ENFORCEMENT OF DECISIONS WHICH HAVE NOT BECOME FINAL IN MAINTENANCE CASES

Article 20. Enforcement of decisions relating to maintenance obligations shall be authorized even if the decisions have not yet become final; articles 10 to 18 shall apply *mutatis mutandis*.

III. ENFORCEMENT OF OTHER DECISIONS WHICH HAVE NOT BECOME FINAL

Article 21. Enforcement of other decisions which have not yet become final shall be authorized, in accordance with articles 10 to 18, *mutatis mutandis*. In such case, however, only those measures which serve to guarantee the rights of the creditor instituting the proceedings shall be authorized.

SECTION FOUR OTHER PROVISIONS

Article 22. (1) The courts of either State shall, at the request of a party to the proceedings, reject the claim or, if they consider it expedient, stay the proceedings if a proceeding between the same parties and in the same matter is already pending in the other State and if in the latter proceeding there may be rendered a decision which is to be recognized in the first-mentioned State under the provisions of this Treaty.

(2) However, the courts of either State may in urgent cases authorize the application of the interim measures provided for in their municipal law, including measures of conservation, irrespective of which court is dealing with the merits of the case.

Article 23. Recognition or enforcement of a decision relating to the costs of the proceedings may be authorized on the basis of this Treaty only if it would have been applicable to the decision on the merits of the case.

Article 24. Recognition or authorization of enforcement may be denied if 25 years have passed since the last date on which the decision could have been opposed by means of ordinary legal remedies.

Article 25. (1) This Treaty shall not affect the provisions of other international agreements which are in force between the two States and which, in particular spheres of law, govern the recognition and enforcement of judicial decisions.

(2) Recognition and enforcement of arbitral settlements shall be governed by the international agreements which are in force for both States.

Article 26. (1) The provisions of this Treaty shall apply only to those judicial decisions and settlements which were rendered or entered into after the entry into force of this Treaty and which relate to a subject matter which arose after 1 January 1966.

(2) Recognition and enforcement of executory instruments not covered by this Treaty or by other treaties which are or will be in force for both States shall continue to be governed by general provisions.

SECTION FIVE FINAL PROVISIONS

Article 27. Each Contracting State shall inform the other Contracting State of any of its legal provisions which govern

1. Proof that the decision has become final (article 15, paragraph (1), sub-paragraph 2), and
2. Proof that the decision is enforceable (article 15, paragraph (1), sub-paragraph 3).

Article 28. Any difficulties which arise in the application of this Treaty shall be settled through the diplomatic channel.

Article 29. This Treaty shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the State of Israel within three months after the entry into force of the Treaty.

Article 30. (1) This Treaty is subject to ratification. The instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) The Treaty shall enter into force 30 days after the exchange of the instruments of ratification.

Article 31. Either State may denounce the Treaty. The denunciation shall take effect one year after the date on which it was notified to the other State.

DONE at Jerusalem on 20 July 1977, in duplicate in the German and Hebrew languages, both texts being equally authentic.

For the Federal Republic of Germany:

PER FISCHER

For the State of Israel:

M. DAYAN

EXCHANGE OF LETTERS

I

Sir,

Referring to the conclusion of the Treaty between the Federal Republic of Germany and the State of Israel concerning the reciprocal recognition and enforcement of judicial decisions in civil and commercial matters, I have the honour to draw your attention to the fact that recognition and enforcement of a judicial decision may be excluded in Israel in cases of “denial of natural justice”, when the defendant has not had sufficient opportunity to produce a means of defence or proof before the decision has been rendered. I have noted that the Federal Republic of Germany deems this case to be covered by article 5, paragraph (1), sub-paragraph 2, of the Convention.

Accept the assurances, etc.

Jerusalem, 26 November 1979

MARTIN J. GLASS
Deputy Attorney General
(Legislation)

Dr. Walter Rolland
Section Chief of the Ministry
Head of the Delegation
of the Federal Republic of Germany

II

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I]

Accept the assurances, etc.

Bonn, 26 November 1979

Dr. WALTER ROLLAND
Section Chief of the Ministry

Mr. Martin J. Glass
Deputy Attorney General
Head of the Delegation
of the State of Israel
