

No. 21309

PHILIPPINES
and
AUSTRIA

Convention in the field of social security (with implementing agreement signed on 14 January 1982). Signed at Vienna on 1 December 1980

Authentic texts: English and German.

Registered by the Philippines on 15 November 1982.

PHILIPPINES
et
AUTRICHE

Convention sur la sécurité sociale (avec accord d'application signé le 14 janvier 1982). Signée à Vienne le 1^{er} décembre 1980

Textes authentiques : anglais et allemand.

Enregistrée par les Philippines le 15 novembre 1982.

CONVENTION¹ BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF AUSTRIA IN THE FIELD OF SOCIAL SECURITY

The Republic of the Philippines and the Republic of Austria,

Desirous to settle the mutual relations between the two States in the field of social security, have agreed to conclude the following Convention:

SECTION I. GENERAL PROVISIONS

Article 1. (1) For the purpose of this Convention:

1. "Philippines" means the Republic of the Philippines; "Austria" means the Republic of Austria;

2. "Territory" means

—In relation to the Philippines its territory;

—In relation to Austria its federal territory;

3. "National" means

—In relation to the Philippines its national;

—In relation to Austria its citizen;

4. "Legislation" means the laws, regulations and statutory instruments which relate to the social security branches specified in article 2, paragraph (1);

5. "Competent authority" means

—In relation to the Philippines the Social Security Administrator;

—In relation to Austria the Federal Minister for Social Administration;

6. "Institution" means the service or the authority responsible for the application of all or part of the legislation specified in article 2;

7. "Competent institution" means the institution competent under the applicable legislation;

8. "Cash benefit" or "pension" means a cash benefit or a pension including all components thereof provided out of public funds, all increments, readjustment sums, additional allowances as well as lump sum payments and payments made by way [of] refund of contributions.

(2) Other expressions used in this Convention shall have the meanings respectively assigned to them in the legislation concerned.

Article 2. (1) This Convention shall apply

1. In Austria to the legislation concerning

(a) Accident insurance,

(b) Pension insurance with the exception of the insurance for notaries;

2. In the Philippines to the legislation concerning

(a) Work injury,

¹ Came into force on 1 April 1982, i.e., the first day of the third month following that of the exchange of the instruments of ratification, which took place at Manila on 25 January 1982, in accordance with article 24 (1) and (2).

(b) Old age, invalidity and death.

(2) Legislation resulting from agreements with third States shall not be taken into consideration for the application of this Convention, as far as it does not contain in relation to Austria regulations concerning insurance charges.

Article 3. (1) This Convention shall apply to the nationals of the Contracting Parties as well as to the members of their family and their survivors.

(2) This Convention shall not apply to diplomatic agents and career consular officers, to members of the administrative and technical staff of missions and consular posts headed by diplomatic agents or career consular officers and to members of the service staff of such missions and posts as well as to private servants exclusively in the service of diplomatic agents, career consular officers and other members of consular posts headed by such officers.

Article 4. (1) For the application of the legislation of one Contracting Party, nationals of the other Contracting Party shall receive equal treatment with the nationals of the first Contracting Party.

(2) The provisions of paragraph (1) of this article shall not apply to:

- (a) The legislation of both Contracting Parties concerning the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;
- (b) Regulations concerning insurance charges in any agreement concluded by Austria;
- (c) The Austrian legislation concerning the insurance of persons employed by an Austrian government agency in a third State or by members of such an agency.

Article 5. (1) Pensions and other cash benefits payable under the legislation of one Contracting Party shall be paid also while the beneficiary is in the territory of the other Contracting Party.

(2) The provisions of paragraph (1) of this article shall not apply to the compensatory supplement under the Austrian legislation.

SECTION II. PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE

Article 6. Subject to the provisions of article 7, the insurance liability of a person gainfully occupied shall be determined under the legislation of the Contracting Party in whose territory the person is so occupied.

Article 7. If a person employed by an undertaking in the territory of one Contracting Party is detached by this undertaking to work for its account to the territory of the other Contracting Party, the legislation of the first Contracting Party shall continue to apply until the end of the 24-calendar month after the detachment, as if he were still employed in the territory of the first Contracting Party. If the employment in the territory of the other Contracting Party continues for a longer period, the legislation of the first Contracting Party shall remain applicable provided that the employer and the employed person jointly request this and the competent authority of the first Contracting Party has agreed to it, with due regard to the kind and to the circumstances of the employment. Before

the decision is taken, the competent authority of the second Contracting Party shall have the opportunity to express its opinion.

SECTION III

Chapter 1. OCCUPATIONAL DISEASES

Article 8. Where a person contracts an occupational disease after having been employed in the territories of both Contracting Parties in occupations to which, under the legislation of both Contracting Parties, the disease may be attributed, there shall be applied in [this] case only the legislation of that Contracting Party in whose territory he was last employed in such occupations before the disease was diagnosed and, for this purpose, account shall be taken, if necessary, of any employment in such occupations in the territory of the other Contracting Party.

Chapter 2. OLD AGE, INVALIDITY AND DEATH (PENSIONS)

Article 9. If a person has completed insurance periods under the legislation of both Contracting Parties, these periods shall be added together for the acquisition of entitlement to benefit, as far as they do not overlap.

Article 10. (1) If a person who has completed insurance periods under the legislation of both Contracting Parties, or his survivors are claiming benefits, the competent institution shall determine the benefits in the following manner:

- (a) The institution shall determine, in accordance with the legislation applied by it, whether the person concerned has an entitlement to benefit by adding together the insurance periods.
- (b) If entitlement to benefit does exist, the institution shall first calculate the theoretical amount of the benefit which would be payable if all insurance periods completed under the legislation of both Contracting Parties would have been completed exclusively under the legislation applied by it. In cases where the amount of the benefit is independent of the duration of the insurance, then this amount shall be taken to be the theoretical amount.
- (c) Then the institution shall calculate the partial benefit payable on the basis of the amount calculated in accordance with the provisions of subparagraph (b) in proportion to the ratio between the duration of the insurance periods to be considered under the legislation applied by it and the total duration of the insurance periods to be considered under the legislation of both Contracting Parties.

(2) For the application of the provisions of paragraph (1), subparagraphs (b) and (c), of this article, overlapping insurance periods shall be taken into consideration with their full measure.

(3) Where the insurance periods to be taken into consideration under the legislation of one Contracting Party for the purpose of calculating the rate of benefit are in aggregate less than 12 months, no benefit under that legislation shall be paid; in that case the competent institution of the other Contracting Party shall take into account [these] insurance periods for the acquisition of the entitlement to benefit as well as for the determination of the amount of the benefit, as if these insurance periods were completed under the legislation applied by it. These provisions shall not apply if the entitlement to benefit has been acquired under

the legislation of the first Contracting Party exclusively on the basis of insurance periods completed under this legislation.

Article 11. The competent Austrian institutions shall apply the provisions of articles 9 and 10 according to the following rules:

1. For the determination of the institution responsible for paying benefit only Austrian insurance periods shall be taken into account.
2. The provisions of articles 9 and 10 shall not apply to conditions of entitlement and to payment of miners' long service allowance under the miner's pension insurance.
3. For the application of the provisions of article 10, paragraph (1), the following shall apply:
 - (a) The Philippine insurance periods shall be taken into consideration without application of Austrian legislation concerning the recognition of insurance periods.
 - (b) The basis of assessment shall be determined exclusively on Austrian insurance periods.
 - (c) Contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement shall be disregarded.
4. For the application of the provisions of article 10, paragraph (1), subparagraph (c), the following shall apply: if the total duration of insurance periods taken into consideration under the legislation of both Contracting Parties exceeds the maximum number provided under the Austrian legislation for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of insurance periods to be taken into consideration under the Austrian legislation and the above-mentioned maximum number of insurance periods.
5. For the calculation of the helpless person's allowance, the provisions of article 10, paragraph (1), subparagraphs (b) and (c), shall apply; article 14 shall apply accordingly.
6. The amount calculated according to article 10, paragraph (1), subparagraph (c), is increased, as the case may be, by increments for contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement.
7. If the award of benefits under miners' pension insurance depends on the completion of essentially mining activities, within the meaning of the Austrian legislation, in specific undertakings, then from the Philippine insurance periods only those based on a similar occupation in similar undertakings shall be taken into consideration.
8. The special payments are payable in proportion to the Austrian partial benefit; article 14 shall apply accordingly.

Article 12. The competent Philippine institutions shall apply the provisions of articles 9 and 10 according to the following rules:

1. For the determination of the institution responsible for paying the benefit, only insurance periods completed under the Philippine Social Security System shall be taken into account.

2. For the application of the provisions of article 10, paragraph (1), the following shall apply:
 - (a) The Austrian insurance periods shall be taken into consideration for satisfying the qualifying conditions for entitlement to the benefits and for increment purposes.
 - (b) The computation of the average monthly salary credit shall be determined exclusively on the basis of insurance periods completed under the Philippine Social Security System.
 - (c) The pension shall be computed using the pension formula under the Philippine Social Security Law, taking into account the insurance periods completed under both the Austrian and the Philippine Social Security Systems.
3. The amount calculated according to article 10, paragraph (1), subparagraph (c), is likewise increased, as the case may be, by increments for each dependent child, but not exceeding five.

Article 13. (1) Where entitlement to benefit exists under the legislation of one Contracting Party, without the application of the provisions of article 9, the institution of this Contracting Party shall pay the pension which would be payable exclusively on the basis of the insurance periods to be taken into consideration under the legislation applied by it, as long as there is no corresponding entitlement to benefit under the legislation of the other Contracting Party.

(2) The pension determined in accordance with the provisions of paragraph (1) of this article shall be recalculated in accordance with the provisions of article 10 as soon as a corresponding entitlement to benefit under the legislation of the other Contracting Party arises. This recalculation shall have effect from the date on which the benefit under the legislation of this Contracting Party becomes payable. The irrevocability of previous decisions shall not prevent this recalculation.

Article 14. If a person is entitled to benefit under the legislation of one Contracting Party without the application of the provisions of article 9, and such benefit would be higher than the total of the benefits calculated in accordance with the provisions of article 10, paragraph (1), subparagraph (c), the institution of this Contracting Party shall pay its so calculated benefit, increased by the difference between such total and the benefit which would be payable exclusively under the legislation applied by it, as the partial benefit.

SECTION IV. MISCELLANEOUS PROVISIONS

Article 15. (1) The competent authorities shall, by means of an agreement, establish the administrative measures necessary for the application of this Convention. Such agreement may be concluded before the entry into force of this Convention but it shall not enter into force before the Convention enters into force.

(2) The competent authorities of the Contracting Parties shall inform each other of

- (a) All measures taken for the application of this Convention,
- (b) All modifications of the legislation which affect the application of this Convention.

(3) The authorities and institutions of the Contracting Parties shall assist each other in applying this Convention as if they were applying their own legislation. Such assistance shall be free of charge.

(4) The institutions and authorities of the Contracting Parties may contact each other directly for the application of this Convention as well as contact directly the persons concerned or their representatives.

(5) The institutions, authorities and jurisdictions of one Contracting Party may not reject claims or other documents submitted to them, by reason of the fact that they are written in the official language of the other Contracting Party.

(6) Medical examinations to be carried out in application of the legislation of one Contracting Party and referring to persons residing in the territory of the other Contracting Party shall, on request of the competent service and at its charge, be carried out by the institution of the place of residence.

(7) For judicial assistance the respective provisions applicable to the assistance on civil procedures shall apply.

Article 16. The competent authorities shall, in order to facilitate the application of this Convention, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison offices.

Article 17. (1) Any exemption or deduction provided for in the legislation of one Contracting Party for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which have to be submitted for the application of this Convention or the legislation of the other Contracting Party.

(2) Documents and certificates of any kind which have to be submitted for the application of this Convention shall not require authentication.

Article 18. (1) Claims, declarations or appeals which for the application of this Convention or of the legislation of a Contracting Party have been submitted to an authority, institution or another competent service of one Contracting Party shall be considered as claims, declarations or appeals submitted to an authority, institution or another competent service of the other Contracting Party.

(2) Any claim to benefit submitted under the legislation of one Contracting Party shall be considered to be a claim to the corresponding benefit under the legislation of the other Contracting Party in so far as that corresponding benefit is payable in accordance with the provisions of this Convention; this shall not apply when the claimant expressly requests that the determination of an old-age pension under the legislation of one Contracting Party be deferred.

(3) Claims, declarations or appeals which, under the legislation of one Contracting Party, have to be submitted within a specified time to an authority, institution or to another competent service of this Contracting Party may be submitted within the same time to the corresponding service of the other Contracting Party.

(4) In the cases of paragraphs (1) to (3), the body to which the submission has been made shall forward these claims, declarations or appeals without delay to the corresponding competent body of the other Contracting Party.

Article 19. Payments under this Convention shall be made in accordance with any agreement binding the two Contracting Parties at the time when such a payment is made. Failing such an agreement, the payment shall be made in any freely convertible currency.

Article 20. (1) Where an institution of one Contracting Party has made an advance payment for any period, the institution of the other Contracting Party shall, at the request of the first-mentioned institution, withhold any arrears of a corresponding benefit which becomes payable for the same period under the legislation of this Contracting Party. Where an institution of one Contracting Party has overpaid benefit for any period for which the institution of the other Contracting Party becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purpose of the first sentence of this paragraph, as an advance payment.

(2) Where a social assistance authority of one Contracting Party has paid assistance to a person for any period for which this person afterwards becomes entitled to benefit under the legislation of the other Contracting Party, the competent institution of this Contracting Party shall, at the request of the social assistance authority and on its behalf, withhold the amount paid by way of assistance from the arrears of benefit due to be paid for the same period, treating that amount as if it were paid as assistance by a social assistance authority of the latter Contracting Party.

Article 21. (1) Disagreements between the Contracting Parties relating to the interpretation or application of this Convention shall be, as far as possible, resolved by the competent authorities of the Contracting Parties.

(2) If any such disagreement cannot be resolved in this manner, it shall be submitted, at the request of the Contracting Party, to an arbitration court, which shall be formed as follows:

- (a) Each of the Contracting Parties shall appoint, within one month of the date of receipt of the demand for an arbitral decision, an arbitrator. Both arbitrators so appointed shall elect a national of a third State as a third arbitrator, within two months from the date on which the Contracting Party which was last to appoint its arbitrator has notified such appointment.
- (b) If one Contracting Party does not appoint an arbitrator within the specified period, the other Contracting Party may ask the President of the International Court of Justice to appoint one. A similar procedure shall be adopted, at the request of one Contracting Party, if the two arbitrators cannot agree on the election of the third arbitrator.
- (c) In the event that the President of the International Court of Justice is a national of one of the Contracting Parties, the duties entrusted to him in accordance with this article shall pass over to the Vice-President of the Court and if the latter is also a national of one of the Contracting Parties, to the senior judge of the court, to whom the circumstance does not apply.

(3) The arbitration court shall decide by majority of votes. Its decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of the arbitrator appointed by it. The remaining costs shall be borne equally

by the two Contracting Parties. The arbitration court shall determine its rules of procedure.

SECTION V. TRANSITIONAL AND FINAL PROVISIONS

Article 22. (1) This Convention shall not establish any entitlement for payment of benefits for the period before its entry into force.

(2) For the determination of an entitlement to benefits under this Convention, insurance periods completed under the legislation of a Contracting Party before its entry into force shall also be taken into consideration.

(3) Subject to the provisions of paragraph (1), this Convention shall apply also to contingencies which happened before its entry into force, as far as previously determined entitlements have not been settled by lump sum payments. In such cases, in accordance with the provisions of this Convention,

(a) Pensions due only by virtue of this Convention shall be determined at the request of the beneficiary from the entry into force of this Convention.

(b) Pensions which have been determined before the entry into force of this Convention shall be recalculated at the request of the beneficiary.

If the claim for determination or recalculation of the pension is submitted within two years from the entry into force of this Convention, the benefits shall be paid from the date of entry into force of this Convention, otherwise from the date determined under the legislation of each of the Contracting Parties.

(4) If the legislation of the Contracting Parties provided for the exclusion or extinction of entitlement by lapse of time, then as far as entitlement under paragraph (3) is concerned, such provisions shall not apply, if the claim referred to in paragraph (1) is submitted within two years from the date of entry into force of this Convention. If the claim is submitted after the expiration of this period, entitlement to benefits exists, as far as it has not been excluded or extinguished by lapse of time, from the date of submission of the claim, unless more favourable provisions under the legislation of a Contracting Party are applicable.

(5) In the cases of paragraph (3), subparagraph (b), the provisions of article 20, paragraph (1), shall apply accordingly.

Article 23. This Convention shall not affect any existing rights under the Austrian legislation of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of descent.

Article 24. (1) This Convention shall be ratified. The instruments of ratification shall be exchanged at Manila as soon as possible.

(2) This Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

(3) This Convention shall remain in force for an indefinite period. Either Contracting Party may denounce it in writing, with three months' previous notice.

(4) In case of denunciation, the provisions of this Convention shall continue to be in force for rights already acquired, without taking into consideration restrictive provisions provided for in the respective schemes for the case of an insured person staying abroad.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Convention.

DONE in duplicate in Vienna this 1st day of December 1980 in the English and German languages, both texts being equally authoritative.

For the Republic of the Philippines:

[Signed — Signé]¹

For the Republic of Austria:

[Signed — Signé]²

AGREEMENT FOR THE IMPLEMENTATION OF THE CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF AUSTRIA IN THE FIELD OF SOCIAL SECURITY

In accordance with the provisions of article 15, paragraph (1), of the Convention between the Republic of the Philippines and the Republic of Austria in the field of social security of 1 December 1980—afterwards referred to as [the] Convention—the competent authorities, that is

—In the Philippines, the Social Security Administrator,

—In Austria, the Federal Minister for Social Administration,

have agreed for the purpose of applying the Convention as follows:

SECTION I. GENERAL PROVISIONS

Article 1. DEFINITIONS

For the purpose of this Agreement the expressions used in article 1 of the Convention shall have the same meaning as they have in this referred article.

Article 2. LIAISON OFFICES

(1) Liaison offices in accordance with the provisions of article 16 of the Convention are

—In the Philippines, the Office of the Assistant Administrator for Benefits Administration, Social Security System,

—In Austria, the Central Association of the Austrian Social Insurance Institutions.

(2) The liaison offices shall have the duties defined in this Agreement. For the implementation of the Convention they may communicate directly with one another and with the persons concerned or the persons authorized by them. They shall assist one another for the implementation of the Convention.

SECTION II. APPLICATION OF THE PROVISIONS WHICH DETERMINE THE LEGISLATION APPLICABLE

Article 3. DETACHMENTS

In cases arising under article 7 of the Convention the continuation of the legislation of the sending state shall be certificated. The certificate shall be issued

—In the Philippines, by the Social Security System,

—In Austria, by the competent institution for sickness insurance.

¹ Signed by Gilberto Teodoro — Signé par Gilberto Teodoro.

² Signed by Willibald Pahr — Signé par Willibald Pahr.

SECTION III. APPLICATION OF THE SPECIAL PROVISIONS ON THE PARTICULAR KINDS OF BENEFITS

Chapter 1. OCCUPATIONAL INJURIES AND DISEASES

Article 4. EXCHANGE OF INFORMATION ON OCCUPATIONAL DISEASES

For the implementation of article 8 of the Convention the institutions of each Contracting Party shall, on request, send to each other such information as may be required.

Article 5. PAYMENT OF PENSIONS; STATISTICS

For pensions the provisions of articles 7 and 8 shall apply accordingly.

Chapter 2. OLD AGE, INVALIDITY AND DEATH (PENSIONS)

Article 6. INVESTIGATION OF CLAIMS FOR BENEFIT

(1) The competent institutions shall inform each other without delay of any claim to which the provisions of section III, chapter 2, in connection with the provisions of article 18, paragraph (2), of the Convention is applicable.

(2) The competent institutions shall thereafter notify each other of any other fact relevant to the determination of the claim and shall send, where appropriate, medical reports.

(3) The competent institutions shall inform each other of the decisions on the claim.

Article 7. PAYMENT OF PENSIONS

The competent institution shall pay pensions in the case of old age, invalidity and death directly to the persons entitled.

Article 8. STATISTICS

The competent institutions shall send to the liaison office concerned an annual statistic on the payments which were made [altogether] into the other Contracting Party in accordance with the provisions of article 7. These statistics shall be exchanged by the liaison offices.

SECTION IV. FINAL PROVISIONS

Article 9. FORMS

The forms necessary for the implementation of the Convention shall be agreed by the liaison offices.

Article 10. ENTRY INTO FORCE

This Agreement shall enter into force at the same time as the Convention.

DONE in duplicate at Vienna, this 14th day of January 1982 in the English and German languages, both texts being equally authoritative.

For the Social Security Administrator:

[Signed — Signé]¹

For the Federal Minister
for Social Administration:

[Signed — Signé]²

¹ Signed by Siazon — Signé par Siazon.

² Signed by Josef Schuh — Signé par Josef Schuh.