

No. 25990

**FINLAND
and
AUSTRIA**

**Agreement concerning the recognition and enforcement of
judicial decisions in civil matters. Signed at Vienna on
17 November 1986**

Authentic texts: Finnish and German.

Registered by Finland on 22 June 1988.

**FINLANDE
et
AUTRICHE**

**Accord relatif à la reconnaissance et à l'exécution des dé-
cisions judiciaires en matière civile. Signé à Vienne le
17 novembre 1986**

Textes authentiques : finnois et allemand.

Enregistré par la Finlande le 22 juin 1988.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE REPUBLIC OF FINLAND AND THE
REPUBLIC OF AUSTRIA CONCERNING THE RECOGNITION
AND ENFORCEMENT OF JUDICIAL DECISIONS IN CIVIL
MATTERS

The Republic of Finland and the Republic of Austria,

Desiring, in relations between the two States, to ensure the recognition and enforcement of judicial decisions in civil matters, have agreed as follows:

Article 1

1. This Agreement shall apply to decisions in civil matters rendered in the Contracting States.

2. The term “decision” in this Agreement shall mean any judgement and any order rendered by a court to decide on the subject-matter of an action, even if the decision is rendered in criminal proceedings. Decisions rendered in Finland by a city/county administrative tribunal in civil matters shall be valid as judicial decisions.

3. This Agreement shall apply to decisions in matters relating to maintenance and to decisions by courts and administrative authorities concerning the repayment of maintenance advances. For the purpose of this paragraph an interim order shall also be valid as a decision. The Agreement shall not, however, apply to proportional maintenance orders under the Austrian law on enforcement.

4. The Agreement shall not apply:

(a) To decisions relating to personal status, the law of succession and, except in matters relating to maintenance, family law;

(b) To decisions in bankruptcy, composition or similar proceedings or to decisions rendered in connection with such proceedings on the validity of legal acts of a debtor;

(c) To decisions concerning liability for nuclear damage.

Article 2

An order rendered by a court in a matter to which this Convention applies shall, if it concerns the restitution of the costs of an action to the opposing party or the payment of a witness or an expert, be equivalent to a decision.

Article 3

A decision rendered by the court of a Contracting State (State of origin) shall be recognized in the other Contracting State (the State applied to) if

(a) The court which rendered the decision had jurisdiction in accordance with the provisions of articles 5 to 7; and

¹ Came into force on 1 May 1988, i.e., the first day of the third month following the month of the exchange of the instruments of ratification, which took place at Helsinki on 2 February 1988, in accordance with article 18.

(b) The decision is final under the law of the State of origin; decisions which are not yet final and which concern the payment of a sum of money shall, however, be recognized.

Article 4

Recognition of a decision rendered in a Contracting State may be refused:

- (a) If it is contrary to the public policy of the State applied to;
- (b) If, as between the same parties, a final decision has been rendered on the same subject-matter in the State applied to;
- (c) If, as between the same parties, proceedings relating to the same subject-matter are pending before a court of the State applied to and the proceedings were first instituted before such court;
- (d) If, as between the same parties, a decision has been rendered on the same subject-matter in a third State and such decision is recognized in the State applied to; or
- (e) If the decision has been rendered against a defendant who has not entered an appearance in the proceedings and has not been notified of these proceedings in sufficient time to prepare his defence.

Article 5

The jurisdiction of the courts of the State of origin shall be recognized for the purposes of this Agreement:

- (a) If, on the date of the institution of proceedings, the defendant was domiciled or normally resident in the territory of the State of origin or, in the case of a body corporate or commercial company, its headquarters or principal establishment were situated therein;
- (b) If the defendant had a commercial establishment or branch establishment in the State of origin and has been served with a summons in that State for claims relating to the operation of such establishment or branch establishment;
- (c) If recognition is sought for a decision against the party bringing the action before the courts of the State of origin;
- (d) If the subject-matter of the action is a claim for personal or material damages arising out of an extracontractual liability and the tort was committed in the territory of the State of origin, while the tortfeasor was present in that State; or
- (e) If with the action recognition is sought for a right to immovable property or for a claim arising out of a right to such property and the property is situated in the State of origin.

Article 6

The jurisdiction of the courts of the State of origin shall be recognized for the purposes of this Agreement:

- (a) If the defendant has expressly submitted to the jurisdiction of the court of the State of origin; or
- (b) If the defendant has entered an appearance in the action before the court of the State of origin without pleading want of the court's jurisdiction, except that,

owing to the subject of the action, the jurisdiction of the courts of the State of origin could not have been established by arrangement; in particular, if, prior to the proceedings on the main issue, the defendant has stated that he is entering an appearance only in respect of property situated in the State of origin, this shall not be considered an appearance.

Article 7

The jurisdiction of the courts of the State of origin shall, for the purposes of this Convention, be recognized for a counterclaim where these courts had jurisdiction within the meaning of articles 5 or 6 in respect of the principal claim.

Article 8

The court of the State applied to shall be bound, when considering the question of the jurisdiction of the courts of the State of origin within the meaning of this Convention, by the findings of fact on which this court has based its jurisdiction.

Article 9

The courts of a Contracting State shall, in accordance with the provisions of their national law, either refuse a claim or defer decision, if, as between the same parties, an identical claim, based on the same cause of action, is already pending before a court of the other Contracting State and the proceedings may lead to a decision which qualifies for recognition under this Agreement.

Article 10

1. The pendency of proceedings before the court of one Contracting State shall not prevent the granting of an interim order in the other Contracting State.

2. If a person has applied for the grant of an interim order in a Contracting State and if that person is obliged to institute proceedings himself within a specified period, it shall be sufficient for him to institute proceedings within the set period before a court of the other Contracting State, provided the proceedings may lead to a decision which qualifies for recognition under this Agreement.

Article 11

1. Any decision rendered by a court of a Contracting State which is enforceable in the State of origin shall, on application, be enforced in the State applied to, if the requirements for its recognition are fulfilled.

2. Decisions concerning the payment of a sum of money which are not yet final but are, none the less, enforceable in the State of origin shall, in the State applied to, constitute the basis for forcible recovery.

Article 12

The procedure for obtaining a grant of execution and for proceeding to execution shall be governed, subject to the provisions of this Agreement, by the law of the State applied to.

Article 13

1. The Party applying for enforcement must produce an original copy of the decision, or a copy prepared by the competent authority, and proof of enforceability

in the State of origin, as well as — except in the case provided for under article 11, paragraph 2 — proof that the decision is final. In the case of decisions rendered by a Finnish chief executor (article 1, paragraph 2), a certificate confirming that no legal redress has been obtained within the period specified for the formal protest shall be sufficient.

2. Documents to be produced in Austria must be drawn up in German or accompanied by a translation in that language. Documents to be produced in Finland must be drawn up in Finnish or Swedish or accompanied by a translation in one of those languages. The translation must be certified correct by a person duly authorized in one of the two Contracting States.

3. The documents to be produced under this Agreement shall be exempt from legalization or from any other formality of a similar nature.

Article 14

1. A settlement concluded before a court of one of the Contracting States in a civil matter to which this Agreement applies shall be enforceable in the other Contracting State if the settlement is enforceable in the State in which it was concluded and the enforcement is not contrary to the public policy of the State applied to.

2. The same shall apply to enforceable settlements and agreements, concluded before an Austrian authority responsible for the protection of minors, between the authority itself, as representative of the person entitled to maintenance, on the one hand, and the person responsible for providing maintenance, on the other hand, as well as to maintenance contracts established before a Finnish public welfare committee.

3. The provisions of articles 11 to 13 shall be applicable *mutatis mutandis* to the enforcement.

Article 15

Certificates issued by a Finnish public welfare committee concerning the revised level of maintenance contributions due on the basis of decisions, settlements or contracts shall be valid as part of the relevant maintenance order.

Article 16

1. The present Agreement shall not affect the provisions of other agreements or conventions to which the two Contracting States are parties and which govern the recognition and enforcement of decisions or settlements.

2. Where a Contracting State is a party to the European Community Convention of 27 September 1968 on judicial competence and the execution of decisions in civil and commercial matters, it shall not, pursuant to article 59 of that Convention, recognize decisions rendered by the courts of the other States parties to the agreement against defendants who were domiciled or habitually resident in the territory of the other Contracting State of the present Agreement, if, in cases of the kinds referred to in article 4 of the Convention of 27 September 1968, the decision could be based only on a competence of the kind referred to in article 3, second paragraph. This shall also apply *mutatis mutandis* where a Contracting State accedes to a multilateral agreement of a similar kind.

3. This Agreement shall not affect the provisions of the internal law of a Contracting State, whereby the recognition or enforcement of decisions or settle-

ments of the other Contracting State is more extensively established than in this Agreement.

Article 17

1. This Agreement shall, subject to the provisions of paragraph 2, apply only to decisions rendered after the date of its entry into force and to settlements concluded after the said date.

2. Where, in matters relating to maintenance, the decision was rendered, the settlement concluded or the maintenance contract drawn up before the aforesaid date, this Agreement shall apply only to the extent that the relevant maintenance order is recognized and enforceable in respect of payments under this Agreement falling due after the date of its entry into force.

Article 18

This Agreement shall be ratified. The instruments of ratification shall be exchanged at Helsinki. The Agreement shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

Article 19

Either Contracting State may denounce this Agreement by notifying the other Contracting State in writing. Denunciation shall take effect six months after the date of such notification.

IN WITNESS WHEREOF the Plenipotentiaries of both sides have signed this Agreement.

DONE at Vienna on 17 November 1986, in two originals, in the Finnish and German languages, both texts being equally authentic.

For Finland:

KAARLO YRJÖ-KOSKINEN

For the Republic of Austria:

PETER JANKOWITSCH
