

No. 26970

**SPAIN
and
PHILIPPINES**

**Convention on social security. Signed at Manila on 20 May
1988**

Authentic texts: Spanish and English.

Registered by Spain on 13 December 1989.

**ESPAGNE
et
PHILIPPINES**

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Enregistrée par l'Espagne le 13 décembre 1989.

CONVENTION¹ ON SOCIAL SECURITY BETWEEN THE PHILIPPINES AND SPAIN

TITLE I². GENERAL PROVISIONS

Article 1

1. For the purpose of the present Convention, the expressions and terms cited as follows will have the following meaning:

1st. "Contracting Party" means the Philippines or Spain.

2nd. "Territory" means in relation to the Philippines, its territory as defined in the 1986 Philippine Constitution and in relation to Spain, the Spanish national territory.

3rd. "Legislation" means the laws, regulations and statutory instruments related to the branches of Social Security specified in Article 2, paragraph 1.

4th. "Nationals" means in relation to the Philippines, its citizens as defined in the 1986 Philippine Constitution, and with respect to Spain, Spanish subjects in accordance with Title I, Book I of the Civil Code.

5th. "Competent Authority" means with respect to the Philippines, the Administrator of the Social Security System and in relation to Spain, the Minister of Labor and Social Security.

6th. "Institution" means the Institution or Authority responsible for implementing, completely or partially, the legislations specified in Article 2.

7th. "Competent Institution" means the Institution which should take cognizance of each case, in conformity with applicable legislation.

8th. "Economic benefit or pension" means any economic benefit or pension provided for by the legislations mentioned in Article 2 including any subsequent updating.

9th. "Worker" means any person who, as a consequence of having undertaken an activity as a worker, either employed by another or self-employed, is or has been subject to the legislations enumerated in Article 2.

10th. "Insurance period" means for the Philippines the periods with contributions in accordance with Philippine legislation. For Spain, the periods of contribution or equivalent periods considered as such by Spanish legislation.

2. Other expressions and terms used in the Convention shall take the meaning which the respective legislation gives them.

Article 2

1. The present Convention will be applied:

A. In the Philippines:

The legislation on Social Security with respect to the economic benefits for:

a. Old-Age.

¹ Came into force on 1 November 1989, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Madrid on 15 September 1989, in accordance with article 34.

² The preamble appears in the authentic Spanish text only.

- b. Disability.
- c. Death and survivorship.
- d. Benefits for maternity, sickness and non-work-related injury.
- e. Work-related injury and occupational illness.

B. In Spain:

The legislation on the General Regime and the Special Regime which make up the Social Security System with respect to the economic benefits for:¹

- a. Old-Age.
- b. Disability.
- c. Death and survivorship.
- d. Temporary incapacity for work due to common illness and non-work-related accident.
- e. Work-related injuries or occupational illness.

2. The present Convention shall be applied in equal manner to the legal provisions that may in the future complete or modify those enumerated in the preceding Article.

3. The present Convention shall be applied to the legislations that may establish a new Special Regime of Social Security when agreed upon by the Contracting Parties.

4. The Convention shall be applied to the legislations that may amplify the coverage of legislations in effect to include new groups of persons, provided the Competent Authority of the other Party does not oppose the same within three months following receipt of notification of said provisions.

Article 3

The present Convention shall be applied to the workers who are nationals of either Contracting Party, as well as the members of their family and beneficiaries who are entitled to benefits.

It shall also be applied to workers who are refugees in conformity with the 28 July 1951 Geneva Convention² and the 31 January 1967 Protocol³ and stateless persons, in accordance with the 28 September 1954 Convention,⁴ who reside ordinarily in the territory of one of the Parties, as well as the members of their family and beneficiaries entitled to benefits.

Article 4

The persons referred to in the preceding Article shall be subject to the laws established under Article 2 of the present Convention, under equal conditions for the nationals of either Contracting Party.

¹ The order of sub-paragraphs (a) to (e) hereinafter, is different in the authentic Spanish text.

² United Nations, *Treaty Series*, vol. 189, p. 137.

³ *Ibid.*, vol. 606, p. 267.

⁴ *Ibid.*, vol. 360, p. 117.

TITLE II. PROVISIONS ON APPLICABLE LEGISLATION

Article 5

1. The persons to whom the present Convention may be applicable shall be exclusively subject to the legislation of the Contracting Party in which territory they undertake their labor activity.

2. In the case of self-employed workers who by reason of their work may be subject to the legislation of both Parties, the legislation of the Contracting Party in whose territory they establish their residence shall be applied. If they reside in both Parties, they shall be subject to the legislation of the Party where they ordinarily reside.

Article 6

The principles cited in Article 5 of the present Convention will have the following exceptions:

a. The worker who is in the service of a company that has an establishment in the territory of one of the Parties on which it normally operates, and is posted by said company in the territory of the other Party for the purpose of taking charge of a job on the account of said company, shall continue to be subject to the legislation of the first Party on condition that said worker is not sent to replace another whose period of assignment has ended and provided that the scheduled duration of the job does not exceed three years.

In case such work should be extended for a period longer than that scheduled, the preceding situation may be maintained as an exception as long as there exists an agreement on the matter between the Competent Authorities of both Parties.

b. The diplomatic personnel and career consuls as well as the officials or persons in the service of the Government of one of the Contracting Parties who may have been posted in the territory of the other Party shall be governed by the Vienna Convention on Diplomatic Relations of 18 April 1961¹ and on Consular Relations of 24 April 1963.²

c. Workers in the service of a diplomatic mission or in the service in a personal capacity of a member of said mission who are nationals of a Contracting Party represented, can opt for the application of the legislation of the Party represented within the period of three months which shall begin to be counted from the date of the start of their work or the date of effectivity of the present Convention.

d. Persons who are employed in a port of a Contracting Party in jobs of loading and unloading, repairs or in the inspection of said jobs, shall be subject to the legislation of the Contracting Party to which the port belongs.

Article 7

1. The pensions, subsidies, income and indemnities to which one may be entitled by virtue of the legislation of a Contracting Party shall not be subject to reduction, modification, retention or imposition by reason of the fact that the beneficiary resides in the territory of the other Party.

¹ United Nations, *Treaty Series*, vol. 500, p. 95.

² *Ibid.*, vol. 596, p. 261.

2. The Social Security benefits to which one is entitled under the legislation of one of the Contracting Parties shall be paid to the nationals of the other Party who reside in a third country under the same conditions and to the same extent as those given to the nationals of the first Party who reside in said third country.

TITLE III. PROVISIONS ON BENEFITS

CHAPTER 1. TOTALIZATION OF INSURANCE PERIODS

Article 8

1. When a worker has been subject to the legislation of the two Contracting Parties, the insurance periods complied with in each Party shall be totalized provided they do not overlap.

2. When there is an overlap of insurance periods, the following rules shall be taken into account:

- a. When an obligatory insurance period coincides with a voluntary insurance period or an equivalent period, the obligatory insurance period shall be taken into account.
- b. When a voluntary insurance period and an equivalent period coincide, the voluntary insurance period shall be taken into account.
- c. When two voluntary insurance periods, or two equivalent insurance periods coincide, the voluntary insurance period or the equivalent periods corresponding to the Party in which the person may have been mandatorily insured in the last instance shall be taken into account.
- d. When it is not possible to determine the period in which determinate insurance periods may have been completed, it shall be presumed that said periods do not overlap with the insurance periods complied with in the other Party.

Article 9

In cases where it is the legislation of one of the Contracting Parties which determines the right or the amount of benefits upon completion of the insurance and the equivalent periods derived from the exercise of a profession for which a special Social Security regime may exist, what will be totalized by the Competent Institution of said Party shall only be the insurance and equivalent periods complied with in the Special Regime corresponding to the Social Security of the Party or, in its absence, those derived from the exercise of the same profession.

CHAPTER 2. SICKNESS BENEFITS

Article 10

The economic benefits for sickness shall be determined and paid by the Competent Institution of the Party whose legislation is applicable to the worker in accordance with Articles 5 and 6.

In order to be entitled to such benefits, the totalization of the insurance periods in the manner as provided in Article 8 shall be taken into account when necessary.

CHAPTER 3. OLD-AGE BENEFITS

Article 11

The worker who may have been successively or alternatively subject to the legislation of both Contracting Parties shall be entitled to the benefits under this Chapter as follows:

1. If the requisites under the legislation of one or both Contracting Parties for entitlement to benefits are completed, the Competent Institution or Institutions shall apply their own internal legislation taking into account only the insurance periods complied with under said legislation.

2. If the requisites under the legislation of one or both Contracting Parties for entitlement to benefits are not completed, the Competent Institution or Institutions shall totalize the insurance periods completed under the legislation of the other Party with their own. If after totalization, the right to the benefit is established, the following rules shall be applied in order to estimate the amount of benefit:

a. The amount of benefit to which the interested person shall have been entitled shall be determined as if all the totalized insurance periods have been completed under one legislation (theoretical pension).

b. The amount of pension actually due shall be established by applying to the theoretical pension the same proportion that exists between the insurance period completed in the Party to which the Institution estimating the pension belongs and the totalization of the insurance periods complied with in both Parties (pro-rata pension).

Article 12

Where a pension is established by only one of the Parties because the requirements in the other Party are not completed, the benefit shall be adjusted, if necessary, in accordance with Article 11 once the requirements in both Parties shall have been complied with.

Article 13

1. Where a worker does not complete, in accordance with the legislation of one of the Contracting Parties, insurance periods of twelve months and, under the legislation of such Party is not entitled to benefits, the Institution of that Party shall not recognize any benefit for said period. In this case, the Institution of the other Party shall take into account, if necessary, the insurance periods completed in the first Party, but Article 11, paragraph 2 will not apply.

2. Notwithstanding the preceding paragraph, when the periods completed in both Parties are less than one year and with the totalization of said periods an entitlement to benefit can be acquired in one or both Parties, Article 11, paragraph 2 shall apply.

CHAPTER 4. DISABILITY BENEFITS

Article 14

1. Chapter 3 of this Title shall apply by analogy to the disability benefits to be established under the Provisions of this Convention.

2. In order to determine the degree of disability of the worker, the Competent Institutions of either Party shall take into account such medical reports and administrative information as provided by the Competent Institution of the other Party. Nevertheless, each Competent Institution shall have the right to subject the worker to a check-up by a doctor of its choice.

CHAPTER 5. SURVIVORS' BENEFITS

Article 15

Chapter 3 of this Title shall apply by analogy to the survivors' benefits established under the provisions of this Convention.

CHAPTER 6. [FUNERAL EXPENSE BENEFITS]¹

Article 16

1. Funeral expense benefits which shall be established by the Competent Authority in accordance with the legislations of either Contracting Party shall have the amount applicable to the worker at the time of death [according to the provisions of Articles 2 to 6].¹

2. In case there is a right to benefit as a result of the application of the legislation of both Contracting Parties, the recognition of said benefit shall be governed by the legislation of the Party in which territory the worker last resided.

3. If the residence of the insured Party is in a third country, the legislation applicable, in case he has the right to the benefit in both Contracting Parties, shall be that of the Party in which territory was subject to legislation.

4. In case the period of insurance necessary for the establishment of the right to death benefits and required by the legislation of the Party in which territory he last resided is not complied with at death, the period of insurance completed by the worker in the other Party shall be totalized.

TITLE IV. PROVISIONS ON WORK-RELATED INJURY AND OCCUPATIONAL ILLNESS BENEFITS

Article 17

Entitlement to a benefit arising from a work-related injury or occupational illness shall be determined in accordance with the legislation of the Contracting Party to which the worker was subject at the time the injury occurred or the occupational illness was contracted.

Article 18

1. When required under the legislation of either Contracting Party, the reduction of ability due to a work-related injury or occupational illness shall take into account the sequelae of earlier work-related injury or occupational illness suffered by the worker while subject to the legislation of the other Party.

2. Where the worker is entitled to benefits due to a new work-related injury, the amount of the benefit shall be determined by taking into account the reduction

¹ The text within brackets appears only in the authentic English text.

of ability for work as a result of the injury according to the legislation then applicable to the worker.

Article 19

1. Occupational illness benefits shall be established in accordance with the legislation of the Contracting Party applicable to the worker while carrying out an activity exposed to the risk of occupational illness even though the illness has been diagnosed for the first time while the worker was subject to the legislation of the other Party.

2. When a worker has successively or alternatively carried out the said activity while subject to the legislations of both Parties, his entitlement will be determined in accordance with the legislation of the Party to which he was last subject for that activity.

3. When an occupational illness benefit has been paid by one of the Contracting Parties, this Party will be liable for any aggravation of the illness while the worker is subject to the legislation of the other Party. However, when the worker has carried out an activity exposed to the same risk while subject to the legislation of the other Party, the Competent Institution of the latter shall determine and pay the benefit in accordance with its own legislation. If, as a consequence thereof, the new benefit is lower than what was payable by the first Party, this Party will compensate for the difference.

TITLE V. MISCELLANEOUS PROVISIONS

Article 20

1. In order to determine the bases for calculating the benefit in Article 11, paragraph 2, each Competent Institution shall apply its own legislation without taking into consideration, in any case, salaries received in the other Contracting Party.

2. When all or part of the contributory period elected by the applicant for the calculation of his benefit computation base has been completed under the Philippine laws, the Spanish Agency shall determine the aforementioned computation base by reference to the minimum contribution base in force in Spain during that period or fraction thereof, for workers of the same occupational or professional category to which the person concerned belonged while in Spain.

3. For the application of Philippine legislation, when all or part of the insurance period of the worker that will be used in determining his average monthly salary credit as basis of the computation of his benefits has been completed in the other Contracting Party, the Philippine Competent Institution shall assume the complete monthly salary credit of the worker in the Philippines before or after the said period, whichever is more beneficial to the worker, as his salary credits during the said period.

Article 21

The Competent Authorities:

1. Shall include the Administrative and Technical agreement needed for the implementation of this Convention.

2. Shall designate the liaison agencies of each of the two Parties that shall facilitate direct communication between them.
3. Shall communicate to each other all information relative to measures when to implement this Convention.
4. Shall as soon as possible communicate to each other all information relative to the modifications that arise in the legislation or regulation of one Party that can affect the implementation of the present Convention.
5. Shall regulate by common agreement the modalities for medical and administrative control as well as the assessment procedures for the implementation of the present Convention and the social security legislation of the two Contracting Parties.

Article 22

For the implementation of the present Convention, the Competent Authorities and Institutions of both Parties shall extend to each other their good offices and reciprocal technical and administrative collaboration needed for action for such purposes, as if the implementation of one's own legislation were involved. This assistance shall be extended at no cost, except when the Administrative Agreement expressly provides for the contrary.

Article 23

1. The benefits of exemptions from fees for registration, notarization, seals and consular fees provided under the legislation of one of the Contracting Parties for documents to be presented to the Competent Administrations or agencies of their Party shall be extended to the corresponding documents to be presented, in the implementation of the present Convention, to the Competent Administrative Organs or Institutions of the other Party.
2. All instruments, documents and receipts to be presented in the execution of the present Convention shall be exempt from the permit for legalization.

Article 24

1. The Competent Authorities and Institutions of the two Parties can carry out direct relations among themselves and with the interested Parties. They can also avail of their respective Diplomatic Authorities.
2. Any instrument, document or receipt to be used in the implementations of this Convention by the beneficiaries of the same and directed to the Competent Authorities, Institutions and Jurisdictions in Social Security matters, of any of the two Parties shall be validly done in English or Spanish.

Article 25

1. Applications, declarations, appeals or other documents which, for purposes of the implementation of the legislation of one Party, should be presented to the Competent Authority or Institution of said Party within a specified period, shall be considered as having been presented before said entities as if they had been submitted, within the same period, before the corresponding Competent Authority or Institution of the other Party. In such a case, the latter Authority or Institution must transmit without delay the applications and appeals to the corresponding Competent Authority or Institution.

2. Any request for benefit submitted according to the legislation of a Party shall be considered, where appropriate, as a request for the corresponding benefits according to the legislation of the other Party.

Article 26

The Competent Authorities should resolve through negotiations differences in interpretation of the present Convention and its Administrative Agreements that may arise between the Institutions of both Parties.

Should the difference not be resolved through negotiations, it shall be submitted to an Arbitration Committee whose composition and procedure shall be decided upon by common agreement between the Contracting Parties.

The decision of the Arbitral Committee shall be considered as obligatory and final.

Article 27

1. Every insurance or assimilated period complied with under the legislation of one of the Parties before the date of effectivity of this Convention shall be taken into consideration in determining the rights to benefits that may arise in conformity with the provisions of this Convention. Nevertheless, should the insurance period in both Contracting Parties overlap, each Party will take into consideration its own legislation.

2. A benefit shall be due by virtue of this Convention, even when what is involved is a fact that arises prior to its effectivity. For this purpose, every benefit that is not paid or has been suspended due to the nationality of the worker or his residence in the territory of one of the two Parties shall, upon the request of the interested persons, be paid or reinstated from the effectivity of this Convention, provided that the rights previously recognized shall not have resulted in a full settlement.

3. Rights of interested persons obtained before the effectivity of this Convention and the payment of a pension or income may be reviewed upon request. The review shall have the effect of granting to the beneficiaries, starting from the effectivity of this Convention, the same rights as if the Convention [had] been in effect during the liquidation. The request for a review should be submitted within a period of two years counted from the effectivity of this Convention.

4. With respect to the right arising from the application of Sections 2 and 3 of this Article, the provisions in the legislation of the two Contracting Parties concerning the expiration and prescription of rights shall be without effect if the request cited in Sections 2 and 3 of this Article is submitted within the period of two years counted from the effectivity of this Convention. If the request is submitted after this period ends, the right to the benefits that may not have expired or prescribed shall be acquired from the date of the request unless another date more favorable to him shall have been applied.

Article 28

1. Payments made in the implementation of this Convention can be validly realized in the currency of the country to which the Institution obliged to pay belongs.

2. If in any of the Contracting Parties, provisions which restrict the remittance of foreign exchange are promulgated, the two Parties shall immediately adopt the measures necessary to guarantee the enjoyment of the rights derived from this Convention.

Article 29

1. To obtain a benefit in the cases set forth in Article 11, paragraph 2, the requirement of Spanish legislation that a person should be in a situation deemed equivalent to “registered” (*situación asimilada al alta*) shall be considered to have been met if the person concerned is covered under Philippine legislation or is in receipt of a benefit in accordance with Philippine legislation.

2. For purposes of paragraph 1, a person shall be considered to be covered under Philippine legislation if the person is covered for a benefit under such legislation during a period of 12 calendar quarters ending with the calendar quarter in which the contingency occurs according to Spanish legislation.

Article 30

When under the legislation of one of the Contracting Parties, the enjoyment of benefits of social security or any type of earnings or the undertaking of any lucrative activity might produce legal effects on the right to the benefit or the continuance or maintenance of the benefits, this circumstance would have the same legal effect as if they [had] taken place in the territory of the other Party.

Article 31

Benefits under Title III of this Convention will be updated in the same frequency and in the same amount as with internal legislation. However, when the benefit amount has been determined in accordance with Article 11 paragraph 2, the same proportion rule shall apply to the updated amount.

Article 32

1. This Convention shall remain in force without any limitation on its duration. It may be denounced at any time by either Party giving twelve months' notice in writing to the other Party.

2. In the event of the termination of this Convention, any right acquired by a person in accordance with its provisions shall be maintained and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

[TITLE VI. FINAL PROVISIONS]¹

Article 33

This Convention shall enter into force on the first day of the second month following the month in which each Party shall have received from the other Party written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Convention.

¹ The text within brackets appears only in the authentic English text.

Article 34

The present Convention shall be ratified. This instrument of ratification shall be exchanged in Madrid.

It shall take effect on the first day of the second month following the month when the instrument of ratification is exchanged.

BY VIRTUE OF WHICH the authorized representatives of the two Contracting Parties sign this Agreement.

DONE in Manila on the 21st¹ of May 1988 in two copies in the Spanish and English languages, with both texts being equally authentic.

For the Government
of the Republic of the Philippines:

[Signed]

RAÚL S. MANGLAPUS
Secretary of Foreign Affairs

For the Government
of Spain:

[Signed]

FRANCISCO FERNÁNDEZ ORDOÑEZ
Minister of Foreign Affairs

² Should read: "20" — Devrait se lire « 20 ».