

AUSTRIA



Treaty Series No. 70 (1962)

Convention

between Her Majesty in respect of the
United Kingdom of Great Britain and Northern Ireland
and the Federal President of the Republic of Austria
for the Reciprocal Recognition and
Enforcement of Judgments in Civil and
Commercial Matters

Vienna, July 14, 1961

[Instruments of ratification were exchanged on June 14, 1962 and the Convention entered into force on July 14, 1962]

*Presented to Parliament by the Secretary of State for Foreign Affairs
by Command of Her Majesty
November 1962*

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**CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC
OF AUSTRIA PROVIDING FOR THE RECIPROCAL RECOGNITION
AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND
COMMERCIAL MATTERS**

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF
THE COMMONWEALTH (HEREINAFTER REFERRED TO AS "HER BRITANNIC
MAJESTY") AND THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA ;

Desiring to provide on the basis of reciprocity for the recognition and en-
forcement of judgments in civil and commercial matters ;

Having appointed for that purpose as their Plenipotentiaries :

Her Britannic Majesty

For the United Kingdom of Great Britain and Northern Ireland :

The Right Honourable Edward Richard George Heath, M.B.E.,
M.P., Lord Privy Seal,

The Federal President of the Republic of Austria

For the Republic of Austria :

Herrn Dr. Bruno Kreisky,

Federal Minister for Foreign Affairs ;

Herrn Dr. Christian Broda,

Federal Minister for Justice,

Who, having communicated to each other their Full Powers, found in good
and due form, have agreed as follows :

General

ARTICLE I

For the purposes of the present Convention :

(1) The words "territory of one High Contracting Party" and the words
"territory of the other High Contracting Party" shall mean either :

(a) the United Kingdom (England and Wales, Scotland and Northern Ire-
land) and any territories to which the Convention shall have been
extended under Article XIII or,

(b) the Republic of Austria.

(2) The words "superior court" mean :

(a) in the case of the United Kingdom, the House of Lords ; for England
and Wales, the Supreme Court of Judicature (Court of Appeal and
High Court of Justice) and the Courts of Chancery of the Counties
Palatine of Lancaster and of Durham ; for Scotland, the Court of
Session and the Sheriff Court ; and for Northern Ireland, the Supreme
Court of Judicature ; and

(b) in the case of the Republic of Austria, the Landesgerichte, the Kreis-
gerichte, the Handelsgerichte, the Oberlandesgerichte and the Oberste
Gerichtshof.

All other courts in these territories shall be deemed to be "inferior courts" for the purposes of the present Convention.

(3) The words "original court" mean in relation to any judgment the court by which the judgment was given; and the words "court applied to", the court in which it is sought to obtain recognition of a judgment or to which an application for the registration of a judgment or for the grant of execution (Bewilligung der Exekution) is made.

(4) The word "judgment" means any decision of a court, however described (judgment, order and the like) by which the rights of the parties are finally determined, and shall include gerichtliche Vergleiche, but shall not include orders by which only a provisional security is granted (einstweilige Verfügungen). The rights of the parties shall be deemed to be finally determined notwithstanding that an appeal may be pending against the judgment or that it may still be subject to appeal in the courts of the country of the original court.

(5) The words "judgments in civil and commercial matters" shall not be deemed to include judgments given in proceedings for the recovery of any form of taxation or under which a fine or other penalty is payable, but shall be deemed to include judgments given by a court in any criminal proceedings for the payment of a sum of money in respect of damages to an injured party.

(6) The words "judgment debtor" mean the person against whom the judgment was given in the original court and include any person against whom the judgment is enforceable under the law of the country of the original court; and the words "judgment creditor", the person in whose favour the judgment was given, and include any person entitled to avail himself of the judgment.

(7) The word "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or, in the case of a judgment given in the territory of Her Britannic Majesty, a stay of execution.

ARTICLE II

(1) Judgments in civil and commercial matters given by a superior court in the territory of one High Contracting Party, other than judgments given on appeal in proceedings in which an inferior court gave judgment at first instance, shall be recognised and enforced in the territory of the other High Contracting Party in accordance with the provisions of Articles III to X of the present Convention.

(2) Nothing in the present Convention shall be deemed to preclude the recognition and enforcement in the territory of one High Contracting Party, in accordance with the law for the time being in force in the country concerned, of judgments pronounced by any court in the territory of the other High Contracting Party, being judgments to which the present Convention does not apply.

Recognition of Judgments

ARTICLE III

(1) The judgments referred to in paragraph (1) of Article II of the present Convention given in the territory of one High Contracting Party shall, subject to the provisions of paragraphs (2) and (3) of this Article, be recognised in the territory of the other High Contracting Party, unless either :

(a) the court applied to is satisfied of the existence of any of the following objections to the judgment :

1. in the case in question, the jurisdiction of the original court is not recognised under the provisions of Article IV ;
2. the judgment was obtained by fraud ;
3. the recognition of the judgment would be contrary to public policy in the country of the court applied to ;
4. the judgment debtor, being a defendant in the proceedings in the original court, was a person who, under public international law, was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court ;
5. the judgment is sought to be enforced against a person who, under public international law, is entitled to immunity from the jurisdiction of the court applied to ; or

(b) the judgment debtor satisfies the court applied to :

1. of the existence of any of the objections mentioned in the foregoing sub-paragraph ; or
2. that the judgment was given by default and the judgment debtor, being the defendant in the proceedings in the original court, did not actually acquire knowledge of those proceedings at all, or did not acquire it in reasonably sufficient time to enable him to defend. In all cases where it is proved that notice of the proceedings has been duly served on the defendant in conformity with the provisions of Article 3 or sub-paragraph (1) or (2) of paragraph (a) of Article 4 of the Convention between the United Kingdom and Austria regarding legal proceedings in civil and commercial matters signed on March 31, 1931, the court applied to shall accept such service as conclusive evidence that the defendant actually acquired knowledge of the proceedings.

(2) Where the judgment debtor satisfies the court applied to that proceedings by way of appeal have been instituted against the judgment in the country of the original court, or that such proceedings have not been actually instituted, but that he is entitled and intends to appeal, the court applied to shall grant or withhold recognition of the judgment in accordance with the law of its country.

(3) Where the law of the country of the court applied to requires recognition to be withheld from a judgment on the ground that a previous judgment has been given in respect of the same cause of action as between the same parties by a court of competent jurisdiction, recognition shall be withheld.

(4) Recognition shall not be refused merely on the ground that the original court has applied, in the choice of the system of law applicable to the case, rules of private international law different from those observed by the court applied to.

ARTICLE IV

(1) For the purposes of sub-paragraph (a) 1 of paragraph (1) of Article III the courts of the country of the original court shall, subject to the provisions of paragraphs (2) to (5) of this Article, be recognised as possessing jurisdiction in all cases :

- (a) if the judgment debtor, being a defendant in the proceedings in the original court, was, at the time when the proceedings were instituted, resident in, or being a company or other body corporate had its registered or head office in, the country of that court ; or
- (b) if the judgment debtor, being a defendant in the proceedings in the original court, had a branch office or a commercial establishment in the country of that court and the proceedings in that court were in respect of a transaction effected through that branch office or establishment ; or
- (c) if the judgment debtor, being a defendant in the proceedings in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court ; or
- (d) if the judgment debtor, being a defendant in the proceedings in the original court, submitted to the jurisdiction by voluntarily appearing in the proceedings. The expression " voluntarily appearing in the proceedings " does not include an appearance merely for the purpose of protecting property situated in the country of the original court from seizure, or of obtaining the release of property seized, or for the purpose of contesting the jurisdiction of the original court ; or
- (e) if the judgment debtor was plaintiff or counter-claimant in the proceedings in the original court.

(2) The provisions of paragraph (1) of this Article shall not apply to judgments where the subject matter of the proceedings was immovable property, but the jurisdiction of the original court shall be recognised if such property was situated in the country of the original court.

(3) The provisions of paragraph (1) of this Article shall not apply to judgments given in an action of which the subject matter was ships, aircraft or their cargo, if, according to the law of either High Contracting Party, they are conclusive not only against the parties to the proceedings but also against any other person claiming an interest in such ships, aircraft or their cargo inconsistent with the judgment. The jurisdiction of the original court shall, however, be recognised if such ships, aircraft or their cargo were situated in the country of the original court at the time of the commencement of the proceedings in the original court.

(4) The jurisdiction of the original court shall not be recognised in the cases specified in sub-paragraphs (a) and (b) of paragraph (1) and in paragraphs (2) and (3) of this Article, if the bringing of the proceedings in the

original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of the original court.

(5) The provisions of paragraph (1) of this Article shall not apply to judgments concerning :

- (a) family law or personal status (including divorces or other judgments in matrimonial causes) ;
- (b) succession or the administration of estates of deceased persons ;
- (c) bankruptcy proceedings, or proceedings for the winding up of companies or other bodies corporate ;

however, in the case of such judgments, the jurisdiction of the courts of the country of the original court shall be recognised where such recognition is in accordance with the law of the country of the court applied to.

ARTICLE V

(1) The effect of the recognition of a judgment shall be that the judgment shall be treated as conclusive of any matter of law or fact decided therein in any further proceedings between the same parties founded on the same cause of action.

(2) No proceedings for the recovery of a sum of money payable under a judgment to which the present Convention applies shall be entertained by the courts of either High Contracting Party, other than proceedings for enforcement in accordance with Articles VI to X of the present Convention.

Enforcement of Judgments

ARTICLE VI

(1) The judgments referred to in paragraph (1) of Article II of the present Convention given in the territory of one High Contracting Party shall, subject to the provisions of paragraphs (2) and (3) of this Article, be enforced in the territory of the other High Contracting Party in the manner provided in Articles VII to X of the present Convention provided that the following conditions are satisfied :

- (a) none of the objections set out in Article III (read in conjunction with Article IV) to the recognition of the judgment exists ;
- (b) there is payable thereunder a sum of money ;
- (c) it can be established under the provisions of paragraph (5) of this Article that they could be enforced by execution in the country of the original court ;

(2) Where the judgment debtor satisfies the Austrian court applied to that proceedings by way of appeal have been instituted against the judgment in the territory of Her Britannic Majesty, the Austrian court shall adopt the same procedure as on an application for a new trial (Wiederaufnahmsklage).

(3) Where the judgment debtor satisfies the court applied to in the territory of Her Britannic Majesty that proceedings by way of application for a new trial (Wiederaufnahmsklage) or to set aside the judgment (Nichtigkeitsklage) have been instituted against the judgment in Austria or that such proceedings have not been actually instituted but that he is entitled and intends to bring them, the court, if it thinks fit, may take such measures in regard thereto as are permitted by its own law.

(4) If the amount of the costs to be paid under a judgment is not fixed by the judgment itself but by a separate order, such order shall be deemed to be part of the judgment.

(5) A judgment in respect of which a certified copy has been issued by the original court shall, in the absence of proof to the contrary, be deemed to be capable of being enforced by execution in the country of the original court within the meaning of sub-paragraph (c) of paragraph (1) of this Article. A certified copy of a judgment issued by an Austrian court shall bear a certificate to the effect that it is capable of being enforced by execution (vollstreckbar).

ARTICLE VII

(1) In order that any judgment given in the territory of the Republic of Austria should be enforced in the territory of the United Kingdom, an application by a judgment creditor for its registration should, in accordance with the procedure of the court applied to, be made :

- (a) in England and Wales, to the High Court of Justice ;
- (b) in Scotland, to the Court of Session ; and
- (c) in Northern Ireland, to the Supreme Court of Judicature.

(2) The application for registration should be accompanied by :

- (a) a certified copy of the complete judgment authenticated by the court seal and bearing the certificate referred to in paragraph (5) of Article VI ;
- (b) an affidavit of the facts required by the rules of the court applied to ;
- (c) a translation of any document required by this paragraph (except any affidavit in English) certified by a sworn translator or by a diplomatic or consular officer of either High Contracting Party.

(3) The documents enumerated in paragraph (2) shall require no further authentication.

(4) If an application is made in accordance with paragraphs (1) and (2) of this Article in respect of a judgment fulfilling the conditions laid down in Article VI, registration shall be granted.

ARTICLE VIII

(1) In order that any judgment given in the territory of Her Britannic Majesty should be enforced in the territory of the Republic of Austria, an application by a judgment creditor for the grant of execution should, in accordance with the procedure of the court applied to, be made to the Landesgericht or Kreisgericht in whose jurisdiction the judgment debtor has his residence or, in the absence of such residence, where he possesses property.

(2) The application for the grant of execution should be accompanied by :

(a) a certified copy of the judgment authenticated by the court seal, or in the case of judgments of the Sheriff Court, authenticated by the signature of the Sheriff Clerk ;

(b) a document issued by the original court giving particulars of the proceedings and a statement of the grounds on which the judgment was based ;

(c) a translation of any document required by this paragraph certified by a sworn translator or by a diplomatic or consular officer of either High Contracting Party.

(3) The documents enumerated in paragraph (2) shall require no further authentication.

(4) If an application is made in accordance with paragraphs (1) and (2) of this Article in respect of a judgment fulfilling the conditions laid down in Article VI, execution shall be granted.

ARTICLE IX

From the date on which it is granted registration under Article VII or execution under Article VIII, a judgment shall, for the purpose of its execution by virtue of that grant, have effect in the country of the court applied to as if it were a judgment originally given in that country on that date.

ARTICLE X

(1) The procedure for the registration of a judgment under Article VII and the procedure for the grant of execution of a judgment under Article VIII shall be as simple and rapid as possible, and no security for costs shall be required of any person making application for such registration or for the grant of execution.

(2) A period of six years, running from the date of the judgment of the original court, if no appeal has been brought to a higher court in the country of the original court, or from the date of the judgment given in last instance if such an appeal has been brought, shall be allowed by the court applied to for the purpose of making any application for registration or the first application for a grant of execution.

(3) If it is found by the court applied to that the judgment of the original court is in respect of different matters and that one or more, but not all, of the provisions of the judgment are such that, if those provisions had been contained in separate judgments, those judgments could properly have been registered or could have been granted execution, the judgment may be registered or granted execution in respect only of the provisions aforesaid.

(4) If under a judgment a sum of money is payable, which is expressed in a currency other than that of the country of the court applied to, the law of the country of the court applied to shall determine if, and if so, in what manner and in what conditions, the amount payable under the judgment may or shall be converted into the currency of the country of the court applied to for the purposes of the satisfaction or enforcement of the judgment debt.

(5) When granting registration or execution, the court applied to shall, if so requested by the judgment creditor, include the costs of and incidental to registration or the grant of execution.

(6) Where a judgment is granted registration under Article VII or execution under Article VIII such judgment shall carry, in respect of the period up to the date of the grant, interest at the rate (if any) specified in the judgment or in any certificate of the original court accompanying the judgment. As from the date of the grant, interest shall be allowed at 4 per cent. per annum on the total sum (principal and interest) in respect of which the registration or execution is granted.

Final Provisions

ARTICLE XI

The present Convention shall apply only to judgments which are given after the date of its entry into force.

ARTICLE XII

Any difficulties which may arise in connexion with the interpretation or application of the present Convention shall be settled through the diplomatic channel. It is, however, understood that the judgments of courts in the territories of the High Contracting Parties cannot thereby be reopened or altered.

ARTICLE XIII

(1) Her Britannic Majesty may, by a notification given through the diplomatic channel, at any time while the Convention is in force under Article XIV, and provided that an agreement has been concluded by an Exchange of Notes on the points mentioned in paragraph (2) of this Article, extend the operation of the present Convention to any territory for whose international relations Her Britannic Majesty's Government in the United Kingdom of Great Britain and Northern Ireland are responsible.

(2) Prior to any notification of extension in respect of any territory under the preceding paragraph, an agreement shall be concluded between the High Contracting Parties by an Exchange of Notes as to the courts of the territory concerned, which shall be deemed to be "superior courts" for the purposes of the present Convention, and the Courts to which application for registration of any judgment shall be made.

(3) The date of the coming into force of any extension under this Article shall be three months from the date of the notification given under paragraph (1) of this Article.

(4) Either of the High Contracting Parties may, at any time after the expiry of three years from the coming into force of an extension of the present Convention, to any of the territories referred to in paragraph (1) of this Article, terminate such extension on giving six months notice of termination through the diplomatic channel.

(5) The termination of the Convention under Article XIV shall, unless otherwise expressly agreed by both High Contracting Parties, also terminate it in respect of any territory to which it has been extended under paragraph (1) of this Article.

ARTICLE XIV

The present Convention shall be subject to ratification. Instruments of Ratification shall be exchanged at London. The Convention shall come into force one month after the date on which the Instruments of Ratification are exchanged (1) and shall remain in force for three years after the date of its coming into force. If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other, not less than six months before the expiration of the said period of three years, of intention to terminate the Convention, it shall remain in force until the expiration of six months from the date on which either of the High Contracting Parties shall have given notice to terminate it.

(1) The convention entered into force on July 14, 1962.