

23. CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF DECISIONS RELATING TO MAINTENANCE OBLIGATIONS¹

(Concluded 2 October 1973)

The States signatory to this Convention,
Desiring to establish common provisions to govern the reciprocal recognition and enforcement of decisions relating to maintenance obligations in respect of adults,
Desiring to coordinate these provisions and those of the Convention of the 15th of April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children,
Have resolved to conclude a Convention for this purpose and have agreed upon the following provisions

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CHAPTER I – SCOPE OF THE CONVENTION

Article 1

This Convention shall apply to a decision rendered by a judicial or administrative authority in a Contracting State in respect of a maintenance obligation arising from a family relationship, parentage, marriage or affinity, including a maintenance obligation towards an infant who is not legitimate, between

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- (1) a maintenance creditor and a maintenance debtor; or
- (2) a maintenance debtor and a public body which claims reimbursement of benefits given to a maintenance creditor.

It shall also apply to a settlement made by or before such an authority ("transaction") in respect of the said obligations and between the same parties (hereafter referred to as a "settlement").

Article 2

This Convention shall apply to a decision or settlement however described.

It shall also apply to a decision or settlement modifying a previous decision or settlement, even in the case where this originates from a non-Contracting State.

It shall apply irrespective of the international or internal character of the maintenance claim and whatever may be the nationality or habitual residence of the parties.

Article 3

If a decision or settlement does not relate solely to a maintenance obligation, the effect of the Convention is limited to the parts of the decision or settlement which concern maintenance obligations.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Douzième session (1972)*, Tome IV, *Obligations alimentaires* (ISBN 90 12 004 50 0, 470 pp.).

Article 4

A decision rendered in a Contracting State shall be recognised or enforced in another Contracting State –

- (1) if it was rendered by an authority considered to have jurisdiction under Article 7 or 8; and
- (2) if it is no longer subject to ordinary forms of review in the State of origin.

Provisionally enforceable decisions and provisional measures shall, although subject to ordinary forms of review, be recognised or enforced in the State addressed if similar decisions may be rendered and enforced in that State.

Article 5

Recognition or enforcement of a decision may, however, be refused –

- (1) if recognition or enforcement of the decision is manifestly incompatible with the public policy ("*ordre public*") of the State addressed; or
- (2) if the decision was obtained by fraud in connection with a matter of procedure; or
- (3) if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted; or
- (4) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed.

Article 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall be recognised or enforced only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the State of origin and if, having regard to the circumstances, that party has had sufficient time to enable him to defend the proceedings.

Article 7

An authority in the State of origin shall be considered to have jurisdiction for the purposes of this Convention –

- (1) if either the maintenance debtor or the maintenance creditor had his habitual residence in the State of origin at the time when the proceedings were instituted; or
- (2) if the maintenance debtor and the maintenance creditor were nationals of the State of origin at the time when the proceedings were instituted; or
- (3) if the defendant had submitted to the jurisdiction of the authority, either expressly or by defending on the merits of the case without objecting to the jurisdiction.

Article 8

Without prejudice to the provisions of Article 7, the authority of a Contracting State which has given judgment on a maintenance claim shall be considered to have jurisdiction for the purposes of this Convention if the maintenance is due by reason of a divorce or a legal separation, or a declaration that a marriage is void or annulled, obtained from an authority of that State recognised as having jurisdiction in that matter, according to the law of the State addressed.

Article 9

The authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

Article 10

If a decision deals with several issues in an application for maintenance and if recognition or enforcement cannot be granted for the whole of the decision, the authority of the State addressed shall apply this Convention to that part of the decision which can be recognised or enforced.

Article 11

If a decision provided for the periodical payment of maintenance, enforcement shall be granted in respect of payments already due and in respect of future payments.

Article 12

There shall be no review by the authority of the State addressed of the merits of a decision, unless this Convention otherwise provides.

CHAPTER III – PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF DECISIONS

Article 13

The procedure for the recognition or enforcement of a decision shall be governed by the law of the State addressed, unless this Convention otherwise provides.

Article 14

Partial recognition or enforcement of a decision can always be applied for.

Article 15

A maintenance creditor, who, in the State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.

Article 16

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the proceedings to which the Convention refers.

Article 17

The party seeking recognition or applying for enforcement of a decision shall furnish –

- (1) a complete and true copy of the decision;
- (2) any document necessary to prove that the decision is no longer subject to the ordinary forms of review in the State of origin and, where necessary, that it is enforceable;
- (3) if the decision was rendered by default, the original or a certified true copy of any document required to prove that the notice of the institution of proceedings, including notice of the substance of claim, has been properly served on the defaulting party according to the law of the State of origin;
- (4) where appropriate, any document necessary to prove that he obtained legal aid or exemption from costs or expenses in the State of origin;
- (5) a translation, certified as true, of the above-mentioned documents unless the authority of the State addressed dispenses with such translation.

If there is a failure to produce the documents mentioned above or if the contents of the decision do not permit the authority of the State addressed to verify whether the conditions of this Convention have been fulfilled, the authority shall allow a specified period of time for the production of the necessary documents. No legalisation or other like formality may be required.

CHAPTER IV – ADDITIONAL PROVISIONS RELATING TO PUBLIC BODIES

Article 18

A decision rendered against a maintenance debtor on the application of a public body which claims reimbursement of benefits provided for a maintenance creditor shall be recognised and enforced in accordance with this Convention –

- (1) if reimbursement can be obtained by the public body under the law to which it is subject; and
- (2) if the existence of a maintenance obligation between the creditor and the debtor is provided for by the internal law applicable under the rules of private international law of the State addressed.

Article 19

A public body may seek recognition or claim enforcement of a decision rendered between a maintenance creditor and maintenance debtor to the extent of the benefits provided for the creditor if it is entitled *ipso jure*, under the law to which it is subject, to seek recognition or claim enforcement of the decision in place of the creditor.

Article 20

Without prejudice to the provisions of Article 17, the public body seeking recognition or claiming enforcement of a decision shall furnish any document necessary to prove that it fulfils the conditions of sub-paragraph 1, of Article 18 or Article 19, and that benefits have been provided for the maintenance creditor.

CHAPTER V – SETTLEMENTS

Article 21

A settlement which is enforceable in the State of origin shall be recognised and enforced subject to the same conditions as a decision so far as such conditions are applicable to it.

CHAPTER VI – MISCELLANEOUS PROVISIONS

Article 22

A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover costs and expenses in respect of any claim under this Convention.

Article 23

This Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.

Article 24

This Convention shall apply irrespective of the date on which a decision was rendered.

Where a decision has been rendered prior to the entry into force of the Convention between the State of origin and the State addressed, it shall be enforced in the latter State only for payments falling due after such entry into force.

Article 25

Any Contracting State may, at any time, declare that the provisions of this Convention will be extended, in relation to other States making a declaration under this Article, to an official deed ("*acte authentique*") drawn up by or before an authority or public official and directly enforceable in the State of origin insofar as these provisions can be applied to such deeds.

Article 26

Any Contracting State may, in accordance with Article 34, reserve the right not to recognise or enforce –

- (1) a decision or settlement insofar as it relates to a period of time after a maintenance creditor attains the age of twenty-one years or marries, except when the creditor is or was the spouse of the maintenance debtor;
- (2) a decision or settlement in respect of maintenance obligations
 - a) between persons related collaterally;
 - b) between persons related by affinity;
- (3) a decision or settlement unless it provides for the periodical payment of maintenance.

A Contracting State which has made a reservation shall not be entitled to claim the application of this Convention to such decisions or settlements as are excluded by its reservation.

Article 27

If a Contracting State has, in matters of maintenance obligations, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system which its law designates as applicable to a particular category of persons.

Article 28

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions –

- (1) any reference to the law or procedure or authority of the State of origin shall be construed as referring to the law or procedure or authority of the territorial unit in which the decision was rendered;
- (2) any reference to the law or procedure or authority of the State addressed shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought;
- (3) any reference made in the application of sub-paragraph 1 or 2 to the law or procedure of the State of origin or to the law or procedure of the State addressed shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;
- (4) any reference to the habitual residence of the maintenance creditor or the maintenance debtor in the State of origin shall be construed as referring to his habitual residence in the territorial unit in which the decision was rendered.

Any Contracting State may, at any time, declare that it will not apply any one or more of the foregoing rules to one or more of the provisions of this Convention.

Article 29

This Convention shall replace, as regards the States who are Parties to it, the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children, concluded at The Hague on the 15th of April 1958.

CHAPTER VII – FINAL CLAUSES

Article 30

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 31

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 35.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in sub-paragraph 3 of Article 37. Such an objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 32

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension shall have effect as regards the relations between the Contracting States which have not raised an objection to the extension in the twelve months after the receipt of the notification referred to in sub-paragraph 4 of Article 37 and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made.

Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension.

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Article 33

If a Contracting State has two or more territorial units in which different systems of law apply in relation to the recognition and enforcement of maintenance decisions, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the territorial unit to which the Convention applies.

Other Contracting States may decline to recognise a maintenance decision if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the decision was rendered.

Article 34

Any State may, not later than the moment of its ratification, acceptance, approval or accession, make one or more of the reservations referred to in Article 26. No other reservation shall be permitted.

Any State may also, when notifying an extension of the Convention in accordance with Article 32, make one or more of the said reservations applicable to all or some of the territories mentioned in the extension.

Any Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 35

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 30.

Thereafter the Convention shall enter into force

- for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval;
- for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 31;
- for a territory to which the Convention has been extended in conformity with Article 32, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 36

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 35, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period. It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 37

The Ministry of Foreign Affairs of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 31, of the following –

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 30;
- (2) the date on which this Convention enters into force in accordance with Article 35;
- (3) the accessions referred to in Article 31 and the dates on which they take effect;
- (4) the extensions referred to in Article 32 and the dates on which they take effect;
- (5) the objections raised to accessions and extensions referred to in Articles 31 and 32;
- (6) the declarations referred to in Articles 25 and 32;
- (7) the denunciations referred to in Article 36;
- (8) the reservations referred to in Articles 26 and 34 and the withdrawals referred to in Article 34.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 2nd day of October, 1973, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States Members of the Hague Conference on Private International Law at the date of its Twelfth Session.