

N° 668.

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**ALLEMAGNE ET AUTRICHE**

Traité concernant les garanties légales et l'aide judiciaire, signé à Vienne le 21 juin 1923.

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**GERMANY AND AUSTRIA**

Treaty regarding Legal Protection and Assistance, signed at Vienna, June 21, 1923.

## TEXTE ALLEMAND. — GERMAN TEXT.

No. 668. — VERTRAG<sup>1</sup> ÜBER RECHTSSCHUTZ UND RECHTSHILFE ZWISCHEN DEM DEUTSCHEN REICHE UND DER REPUBLIK ÖSTERREICH, GEZEICHNET IN WIEN AM 21. JUNI 1923.

*Texte officiel allemand, communiqué par le Consul d'Allemagne à Genève, et par le Représentant du Gouvernement Fédéral d'Autriche auprès de la Société des Nations. L'enregistrement de cet accord a eu lieu le 18 juillet 1924.*

*German official text, communicated by the German Consul at Geneva and by the Representative of the Austrian Federal Government accredited to the League of Nations. The registration of this Agreement took place July 18, 1924.*

Das DEUTSCHE REICH und die REPUBLIK ÖSTERREICH haben, von dem Wunsche geleitet, zur Förderung der Rechtspflege und des wechselseitigen Verkehrs den Rechtsschutz und die Rechtshilfe in bürgerlichen Rechtssachen zu regeln, den nachstehenden Vertrag abgeschlossen.

Zu diesem Zwecke haben zu Bevollmächtigten ernannt :

## DER PRÄSIDENT DES DEUTSCHEN REICHS :

die Herren ausserordentlichen Gesandten und bevollmächtigten Minister Dr phil. Maximilian PFEIFFER,  
den Vortragenden Legationsrat im Auswärtigen Amte Dr jur. Carl GOES, und  
den Geheimen Regierungsrat und Ministerialrat im Reichsministerium der Justiz Dr jur. Erich VOLKMAR,

## DER PRÄSIDENT DER REPUBLIK OESTERREICH :

die Herren Bundesminister für die Auswärtigen Angelegenheiten Dr Alfred GRÜNBERGER,  
den Sektions-Chef im Bundeskanzleramte (Justiz) Dr Felix MAYER-MALLENAU  
und den Ministerialrat im Bundeskanzleramte (Justiz) Dr Edmund KRAUTMANN,

die, nachdem sie ihre in guter und gehöriger Form befundenen Vollmachten sich mitgeteilt haben, die folgenden Artikel vereinbart haben :

## I. ABSCHNITT.

## RECHTSSCHUTZ IN BEURGERLICHEN ANGELEGENHEITEN.

*Artikel 1.*

Die Angehörigen jedes der vertragschliessenden Staaten geniessen in dem Gebiete des anderen Staates in Ansehung des gesetzlichen und gerichtlichen Schutzes ihrer Person und ihres Eigentums

<sup>1</sup> L'échange des ratifications a eu lieu à Berlin, le 14 avril 1924.

<sup>1</sup> The exchange of ratifications took place at Berlin, April 14, 1924.

## IV. ABSCHNITT.

## ANERKENNUNG GERICHTLICHER ENTSCHEIDUNGEN.

*Artikel 34.*

Rechtskräftige Entscheidungen, denen keiner der im Artikel 25 angeführten Gründe entgegensteht, werden unbeschadet der Bestimmungen des Artikel 36. Abs. 2, Zahl 1., auch im Gebiete des anderen Staates als wirksam anerkannt.

## V. ABSCHNITT.

## ÜBERGANGS- UND SCHLUSSBESTIMMUNGEN.

*Artikel 35.*

Die Bestimmungen der Artikel 2 bis 18 treten im Verhältnis zwischen den vertragschliessenden Staaten an die Stelle der Vorschriften des Haager Abkommens<sup>1</sup> über den Zivilprozess vom 17. Juli 1905.

*Artikel 36.*

1. Von dem Tage des Inkrafttretens dieses Vertrags an treten für die Rechtsbeziehungen zwischen den vertragschliessenden Staaten frühere Staatsverträge, Vereinbarungen und Regierungserklärungen über Fragen, die durch den vorstehenden Vertrag geregelt sind, ausser Kraft.

2. Unberührt bleiben :

1. Die in den beiden vertragschliessenden Staaten geltenden Vorschriften über Ehesachen, über Rechtsstreitigkeiten, welche die Feststellung des Rechtsverhältnisses zwischen Eltern und Kindern betreffen, sowie über das Konkursverfahren und die Todeserklärung ;

2. Die Bestimmungen der Artikel 2. und 24 des deutschösterreichischen Wirtschaftsabkommens<sup>2</sup> vom 1. September 1920 :

3. Die internationalen Kollektivverträge, an denen beide [vertragschliessende Staaten beteiligt sind.

*Artikel 37.*

Dieser Vertrag tritt drei Monate nach dem Austausch der Ratifikationsurkunden in Kraft. Der Vertrag kann von jedem der vertragschliessenden Staaten gekündigt werden. Er bleibt jedoch nach erfolgter Kündigung noch sechs Monate in Kraft.

<sup>1</sup> De Martens, Nouveau Recueil Général de Traités, troisième série, tome II, page 243.

<sup>2</sup> Vol. IV, page 202 de ce Recueil.

<sup>1</sup> British and Foreign State Papers, vol. 99, page 990.

<sup>2</sup> Vol. IV, page 202 of this Series.

<sup>1</sup> TRANSLATION.

## No. 668. — TREATY BETWEEN THE GERMAN REICH AND THE AUSTRIAN REPUBLIC REGARDING LEGAL PROTECTION AND ASSISTANCE, SIGNED AT VIENNA, JUNE 21, 1923.

The GERMAN REICH and the AUSTRIAN REPUBLIC, being desirous of regulating legal protection and legal assistance in civil cases with a view to promoting the administration of justice and mutual intercourse, have concluded the following Treaty.

For this purpose plenipotentiaries have been appointed :

BY THE PRESIDENT OF THE GERMAN REICH :

Dr. Maximilian PFEIFFER, Ambassador Extraordinary and Minister Plenipotentiary,

Dr. Carl GOES, Counsellor of Legation in the Foreign Office, and

Dr. Erich VOLKMAR, Privy Counsellor and Ministerial Counsellor in the Reich Ministry of Justice ;

BY THE PRESIDENT OF THE AUSTRIAN REPUBLIC :

Dr. Alfred GRÜNBERGER, Federal Minister for Foreign Affairs,

Dr. Felix MAYER-MALLENAU, Head of Department in the Federal Chancellery (Justice),  
and

Dr. Edmund KRAUTMANN, Ministerial Counsellor in the Federal Chancellery (Justice),

who, having communicated their full powers, which were found to be in good and due form, agreed upon the following articles :

## SECTION I.

## LEGAL PROTECTION IN CIVIL CASES.

*Article 1.*

The nationals of each of the Contracting States shall receive on the territory of the other State the same treatment as nationals with regard to the legal and judicial protection of their persons and property. They shall have free and unrestricted access to the Courts and may appear there under the same conditions and in the same manner as nationals of the State in question.

*Article 2.*

(1) No security or deposit of any description whatsoever may be required of the nationals of either State who appear as plaintiffs or interveners before the Courts of the other State, by

<sup>1</sup> Translated by the Secretariat of the League of Nations.

reason of their foreign nationality or the fact that they are not domiciled or resident in the country.

(2) The same shall apply in regard to any payment in advance that may be required of plaintiffs or interveners for the purpose of covering legal costs.

#### Article 3.

(1) If costs are awarded on the territory of the one State against a plaintiff or intervener who is exempted from security, deposit or payment in advance by virtue either of Article 2 or of a law in force in the State in which the case was brought, this judgment shall, on application being made by the party awarded costs, be declared by the competent authority free of cost to be executable on the territory of the other State.

(2) The same rule shall apply to judicial decisions by which the amount of the legal costs is subsequently determined.

#### Article 4.

(1) The decisions regarding costs mentioned in Article 3 shall, in accordance with the legislation of the Contracting State on the territory of which execution takes place, be declared to be executable without previous hearing of the parties, but also without prejudice to the right of subsequent appeal by the losing party.

(2) The authority competent to give a decision regarding an application for execution shall only consider the question whether a decision has acquired the force of law according to the law of the Contracting State on the territory of which the judgment is pronounced.

(3) As proof that these requirements have been fulfilled, a certificate from the competent Court, stating that the decision has acquired the force of a final judgment, will be sufficient.

#### Article 5.

The nationals of the one State shall be admitted to the benefits of suing *in forma pauperis* on the territory of the other State under the same conditions as nationals of the latter State.

#### Article 6.

(1) The certificate proving inadequate means must be made out by the authorities of the applicant's habitual place of residence, or, failing such, by the authorities of his actual place of abode.

(2) If the applicant does not reside on the territory of one of the Contracting States, a certificate from the competent diplomatic or consular representative of his State will be sufficient.

#### Article 7.

(1) The authority competent to make out the certificate of inadequate means may apply for information from the authorities of the other Contracting State with regard to the financial position of the applicant.

(2) The authority that has to decide upon the application for permission to sue *in forma pauperis* is entitled, within the limits of its competence, to verify the certificates and information laid before it.

Article 8.

If permission to sue *in forma pauperis* is granted by the competent authorities to a national of one of the Contracting States, he shall also be granted this right in all legal actions referring to the same dispute that are taken in the Courts of the other State on the basis of Articles 1 to 18.

Article 9.

The supreme authority for the administration of justice in each of the Contracting States — in the German Reich the Reich Ministry of Justice, and in the Austrian Republic the Federal Chancellery (Justice) — shall, on request, supply the other with information regarding the law in force in their respective countries.

SECTION II.

LEGAL ASSISTANCE IN CIVIL AFFAIRS.

Article 10.

(1) In civil affairs the service of documents and the granting of letters of request concerning the institution of lawsuits or other judicial proceedings within the sphere of jurisdiction of the authority to which application is made shall be effected by direct official communications between the authorities of the two Contracting States.

(2) Should the authority to which application is made not be competent to deal with the matter, the letter of request must be transmitted *ex officio* to the competent authority, and the authority making application must be immediately informed of the fact.

Article 11.

The application for service must give the name of the authority from which the transmitted document emanates, the name and status of the parties, the address of the recipient and the nature of the document concerned.

Article 12.

(1) The competent authority of the State to which application is made shall be responsible for service. Except in the cases provided for in paragraph 2, this authority may, at its discretion, simply effect service by handing over the document to the addressee, provided that he is prepared to accept it.

(2) If the authority making application so desires, the authority to which application is made must serve the document to be delivered in the form prescribed by its domestic legislation for effecting such service, or in some special form, provided this does not constitute a breach of its legislation.

Article 13.

Service will be proved either by an acknowledgment of receipt from the addressee, duly dated and authenticated, or by an attestation from the authority of the State to which application is made, certifying the fact, the form and the time of service.

*Article 14.*

Each of the Contracting States is authorised to serve documents upon its own nationals who are in the territory of the other State through the agency of its diplomatic or consular representatives without the application of measures of compulsion.

*Article 15.*

(1) The judicial authority to whom a letter of request is sent must comply with it. In particular, requests from German courts for permission to have the oaths of the parties taken in Austria, and requests from Austrian courts for the examination of parties on oath in the German Reich must be granted, provided that the person to be sworn is legally qualified to take an oath according to the law of the State to which application is made.

(2) The authority to which application is made must use the same means of compulsion in complying with a letter of request as in complying with a request from the authorities of the State to which application is made or with a similar application from a party concerned. Such compulsion need not be employed if it is a question of the parties to the dispute appearing in person.

(3) The authority making application shall, if it so desires, be informed of the time and place of the proceedings in regard to the request.

*Article 16.*

An authority may only refuse to comply with applications for service and with requests if the Contracting State on the territory of which they are to be granted considers that such action would be likely to endanger its sovereignty or its security.

*Article 17.*

In regard to the forms to be observed the authority to which application is made must, in complying with a request for legal assistance, act in accordance with its territorial laws. If the authority making application desires that a special form of procedure be adopted, this shall be complied with, provided that the desired form is not contrary to the legislation of the State to which application is made.

*Article 18.*

(1) With the exception of experts' allowances, no dues or charges of any kind may be required for granting applications for service or requests for legal assistance.

(2) The authority to which application is made must, however, communicate to the State making application the amount of the charges incurred, which, by virtue of paragraph 1, are not to be refunded by the State making application, to enable the latter State to collect the amount from the person obliged to refund it. The State making application shall retain the amounts collected.

## SECTION III.

## COMPULSORY EXECUTION.

*Article 19.*

(1) Decisions having the force of law given by the civil courts of either State shall, irrespective of the names employed (judgments, decrees, orders for payment, writs of execution, executory decrees), be executable in the territory of the other State in accordance with the provisions stated hereinafter. This shall not apply, however, to "arrests" or to provisional orders.

(2) Special courts and such courts of arbitration as are competent by virtue of a special State regulation, and irrespective of any arbitration treaty to adjudicate upon private law claims, shall also be considered as civil courts.

*Article 20.*

The lower courts (Amtsgerichte) in the German Reich and the district courts in Austria shall be competent to determine whether compulsory execution shall be granted. The court to whose general jurisdiction the person liable is amenable, or, if no such court exists, the court within whose jurisdiction the debtor has his property, or the measures of execution are to be taken, shall be the court possessing local competence.

*Article 21.*

(1) The creditor's application for the granting of compulsory jurisdiction must contain :

(1) Exact particulars as to the creditor and the debtor, as well as their legal representatives;

(2) All particulars of circumstances that are essential as regards the competence of the Court to which recourse is being had ;

(3) An exact description of the claim to be executed and the decision giving the right of execution ;

(4) If, according to the law of the State on whose territory the compulsory execution is to be carried out, execution takes place *ex officio*, a description of the measures of compulsion to be taken, and, in the event of execution against the property of the debtor, a description of those portions of the property upon which compulsory execution is to be made and also of the place where they are situated, together with all further information, according to the nature of the case, that is of importance with regard to the carrying out of the compulsory execution.

(2) The application shall be accompanied by a copy for each party opposing the application.

*Article 22.*

A complete copy of the decision on the basis of which compulsory execution is to take place against the debtor shall be attached to the application. The fact that the decision has acquired the force of a final judgment shall, unless this appears in the copy, be proved by reference to public records.



*Article 23.*

If, by reason of the terms of a decision, the right to execution is conditional on the expiration of a definite time-limit or on some other fact supervening, or if the grant of compulsory execution is desired in favour of some party other than the creditor mentioned in the decision, or against some party other than the debtor mentioned in the decision, the question as to how far authorisation of compulsory execution is dependent upon proof of special conditions, or as to whether the decision is executable on behalf of or against the other party, shall be determined according to the law of the State whose Court has issued the decision. In so far as the Court deciding upon the granting of compulsory execution is not acquainted with the facts to be established, the proofs required according to the regulations in force must be obtained from public or publicly certified documents. If no such proof can be furnished, the procedure shall be that laid down in Article 24, paragraph 2, sentence 2.

*Article 24.*

(1) The decision pronounced upon the application for compulsory execution shall take the form of a decree. If the application does not conform to the provisions of Articles 20 to 22, or if there is reason to believe that there is a ground for refusal (Article 25), the Court must first of all instruct the applicant to remove the defects. It may fix a time limit within which the applicant must do this. The Court may also apply for information to the Court that has issued the executable decision.

(2) If the Court considers that such a procedure is necessary in order to remove doubt, it may examine the debtor after first communicating to him a copy of the application. The particulars provided for in Article 21, paragraph 1, No. 4, are not to be communicated to the debtor in this copy. The Court may also order oral proceedings. Such proceedings must be ordered if, in the case provided for in Article 23, the necessary proof of facts unknown to the Court cannot be furnished either by public or publicly certified documents.

*Article 25.*

(1) Compulsory execution shall be refused if the defects in the application are not removed before the expiration of the time-limit specified in Article 24.

(2) It shall likewise be refused :

(1) if, according to the laws of the State responsible for the execution of the judgment, sole competence in the case lies with a special Court of that State ;

(2) if compulsory execution involves the recognition of a legal situation or the establishment of a claim which, on grounds of public order or morality, is not valid or in respect of which no action can be brought in the territory of the State responsible for the execution.

(3) Further, it may not take place in favour of a party who is a national of the State in question :

(1) if, in deciding in regard to his civil capacity or capacity to bring an action or in regard to his legal representation, or in deciding a matter concerning family rights or rights of succession material to the claim, or in establishing a person's death, of decisive importance to such a claim, judgment to his prejudice has been based upon laws other than those applicable under the law of the State responsible for execution ;

(2) if he has declined to take part in the proceedings and if the summons or order by which the proceedings were instituted was served only in the form of an ancillary summons or a public notification (German Rules of Civil Procedure, paragraphs 181 to 184, and 203 to 206 ; Austrian Rules of Civil Procedure, paragraphs 102 to 105 ; 115). This shall,

however, only be applicable if he was already a national of the State in question at the date when the proceedings were instituted ;

(3) if, for the decision of the Court rendering judgment, competence lay only with the Court in whose jurisdiction the property was situated (German Rules of Civil Procedure, paragraph 23 ; Austrian Rules of Legal Competence, paragraph 99) or with the Court referred to in paragraph 88, sub-paragraph 2, of the Austrian Rules of Legal Competence, provided that in the latter case the defendant had not declined to take part in the proceedings ;

(4) in examining the grounds for refusing execution the Court shall not be bound by the findings contained in the decision on matters of fact. The legality of the decision to be executed shall not, however, be subject to further examination.

#### Article 26.

(1) The decree by which the application for compulsory execution is decided upon may be opposed in the German Reich by means of an immediate " complaint ", and in Austria by means of an appeal.

(2) Objection may also be lodged against the granting of compulsory execution when there is a ground for refusal to execute which has not already been put forward in accordance with paragraph 1. In so far as the objection is not based on the grounds for refusal set forth in Article 25, paragraph 2 or paragraph 3 (1), it shall be made within 14 days after service of the decree authorising compulsory execution.

#### Article 27.

By means of immediate " complaint " (or appeal) or by objection, the debtor may furthermore lodge protests against the claim in accordance with paragraph 767 of the German Rules of Civil Procedure and paragraph 35 of the Austrian Executive Procedure, and also protests dealing with the conditions of execution specified in paragraphs 732 and 768 of the German Rules of Civil Procedure and paragraph 36 of the Austrian Executive Procedure. Protests of this nature may also be lodged in accordance with the special procedure laid down in these regulations.

#### Article 28.

(1) Disputes shall be settled in accordance with judgment delivered after oral pleadings.

(2) If objection is raised, the Court may, either on application being made or *ex officio*, order that compulsory execution shall, with or without security being given, be temporarily suspended or that it shall only take place on security being given, or that measures of execution already taken shall be cancelled on security being given.

#### Article 29.

In respect of the notification and service of the decree concerning the granting of an application for compulsory execution, the provisions of paragraph 329, sub-paragraphs 1 and 3, of the Rules of Civil Procedure shall be applicable in the German Reich, and the provisions of paragraph 64 of the Executive Procedure in Austria. The decree authorising compulsory execution shall be served on the debtor in the German Reich in all cases at the instance of the creditor.

*Article 30.*

(1) In so far as, in conformity with the laws of the State carrying out execution, compulsory execution takes place *ex officio*, it shall be proceeded with at once unless the creditor shall have reserved the right to take further special action with regard to the carrying out of the execution.

(2) If execution does not take place *ex officio*, it shall be carried out on application being made by the creditor, by means of a copy of the decree authorising compulsory execution which contains the execution clause (execution copy). This copy shall be served *ex officio* on the creditor by the Clerk of the Court.

(3) Compulsory execution at the instance of the creditor may not be begun unless the decree authorising execution has already been served on the debtor or until such time as it has been served. If the law of the State executing the judgment prescribes certain time-limits for execution, titles of the same kind within the country itself before execution can begin, these time-limits must be observed, counting from the date on which the decree authorising execution is served.

*Article 31.*

(1) Unless otherwise specially provided in the present treaty, the regulations governing proceedings in force in the territory of the country of execution, particularly those regarding postponement and suspension of compulsory execution, together with the right of opposition and other rights of third parties in regard to execution, shall apply to compulsory execution authorised by the Treaty. Where a Court of first instance is competent under these regulations to deal with execution proceedings, or pleas relating to compulsory execution, such Court shall be replaced by the Court which authorised compulsory execution.

(2) If, in the course of proceedings to secure the annulment of a judgment or the re-hearing of a case, postponement or suspension of compulsory execution has been ordered in the territory of the State whose Court rendered the executory decision, proceedings shall also be postponed or discontinued in the country in which execution takes place.

*Article 32.*

The provisions of Articles 19 to 31 are applicable in respect of :

(1) Compromises effected before a civil Court in cases of a dispute, and judicially certified partitions of property and adjustment of claims.

(2) Legal and notarial documents in which a debtor has expressly submitted himself to compulsory execution.

*Article 33.*

The fees charged for authorising compulsory execution in virtue of documents of the kind described in Article 32 shall not be higher than those charged for authorising execution in virtue of a judgment pronounced by a foreign Court.

## SECTION IV.

## RECOGNITION OF JUDICIAL DECISIONS.

*Article 34.*

Decisions having the force of law which are not invalidated on any of the grounds specified in Article 25 shall also be recognised as valid in the territory of the other State, notwithstanding the provisions of Article 36, paragraph 2, No. 1.

## SECTION V.

## MEASURES OF TRANSITION AND FINAL PROVISIONS.

*Article 35.*

The provisions of Articles 2 to 18 shall, as between the two Contracting Parties, replace the regulations laid down in the Hague Convention regarding Civil Procedure of July 17, 1905.

*Article 36.*

(1) From the day on which the present treaty comes into force, all former treaties, agreements and governmental declarations regarding questions settled by the present treaty shall be abrogated in so far as juridical relations between the two Contracting Parties are concerned.

(2) The following shall, however, remain in force :

(1) The measures in force in the two Contracting States regarding matrimonial affairs, legal disputes regarding the establishment of the legal relations between parents and children, bankruptcy proceedings and legal declaration of decease.

(2) The provisions of Articles 2 and 24 of the German-Austrian Economic Convention of September 1, 1920.

(3) The international collective treaties to which both Contracting States are parties .

*Article 37.*

The present Treaty shall come into force three months after the exchange of the instruments of ratification. The treaty may be denounced by either of the Contracting States. It shall, however, remain in force six months after the date of denunciation.

*Article 38.*

The present Treaty shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Berlin.

In faith whereof the plenipotentiaries have signed the present Treaty in duplicate and affixed thereto their seals.

Done in duplicate at Vienna on June 21, 1923.

(L. S.) PFEIFFER.

(L. S.) GOES.

(L. S.) VOLKMAR.

(L. S.) GRÜNBERGER.

(L. S.) MAYER-MALLENAU.

(L. S.) KRAUTMANN.