

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1969 Nr. 2

A. TITEL

*Verdrag inzake het verhaal in het buitenland
van uitkeringen tot onderhoud;
New York, 20 juni 1956*

B. TEKST

De Engelse en de Franse tekst van het Verdrag zijn geplaatst in *Trb.* 1957, 121.

C. VERTALING

Zie *Trb.* 1957, 121.

D. GOEDKEURING

Zie *Trb.* 1962, 106.

E. BEKRACHTIGING

Zie *Trb.* 1957, 121 en *Trb.* 1962, 106¹⁾.

Behalve de aldaar genoemde hebben nog de volgende Staten, overeenkomstig artikel 13, lid 2, van het Verdrag, een akte van bekrachtiging bij de Secretaris-Generaal der Verenigde Naties nedergelegd:

de Staat Vaticaanstad ²⁾	5 oktober 1964
Griekenland ³⁾	1 november 1965
de Filippijnen ⁴⁾	21 maart 1968

¹⁾ De Italiaanse Regering heeft op 24 maart 1964 aan de Secretaris-Generaal van de Verenigde Naties medegedeeld, dat met ingang van die datum alleen het Ministerie van Binnenlandse Zaken als verzendende instelling is aangewezen (vergelijk *Trb.* 1962, 106, blz. 2).

Ter uitvoering van artikel 2, leden 1 en 2, van het Verdrag, heeft de Braziliaanse Regering als verzendende en ontvangende instelling aangewezen de „Procuradoria Geral do Distrito Federal” in Brasilia.

De Franse Regering heeft op 24 februari 1967 aan de Secretaris-Generaal van de Verenigde Naties medegedeeld, dat zij in de zin van artikel 2, leden 1 en 2, van het Verdrag, als verzendende instelling heeft aangewezen „Le Ministère des Affaires Etrangères, Division du contentieux, Service du recouvrement des aliments à l'étranger, 23, rue la Pérouse, Paris (XVème)”. Genoemd Ministerie is van 20 oktober 1960 af als ontvangende instelling aangewezen (vergelijk *Trb.* 1962, 106, blz. 3).

2) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Staat Vaticaanstad als verzendende en ontvangende instelling aangewezen de „Giudice Unico” van de Staat Vaticaanstad.

3) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Griekse Regering als verzendende instelling aangewezen het Koninklijk Ministerie van Buitenlandse Zaken en als ontvangende instelling het Ministerie van Justitie.

4) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Filippijnse Regering als verzendende en ontvangende instelling aangewezen het “Office of the Solicitor General” te Manilla.

Ter uitvoering van artikel 3, lid 2, van het Verdrag, heeft de Filippijnse Regering de volgende verklaring gericht tot de Secretaris-Generaal der Verenigde Naties:

“Basis of Claim: Proof of relationship

(a) In case of a claim of one spouse against another for the maintenance or support of claimant spouse and/or her or his dependent children:

(1) the fact of marriage to be evidenced by “a copy [of the marriage contract] attested by the officer having legal custody of the record, or his deputy, and accompanied, if the record is not kept in the Philippines, with a *certificate* that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by the Secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office (Sec. 25 of Rule 132, Revised Rules of Court).

What attestation must state:

SEC. 26. What attestation of copy must state. – Whenever a copy of a writing is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

(2) *filiation of dependent children to be evidenced by certificates of birth issued by the local civil registrar having custody of the registry of births and attested and certified in the manner described in the preceding paragraph (1);*

(3) the *law of country or state of respondent providing for such maintenance or support.*

How law to be proved

SEC. 20. Public and private writings. – The following writings are public:

(a) The written acts or records of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a foreign country;

SEC. 25. Proof of public or official record. – An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

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Translation:

SEC. 34. Documentary evidence in an unofficial language. – Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Spanish, or the national language. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.

(b) In case the claim is evidenced by some private writing or agreement signed by the parties, said writing or agreement should have been duly *acknowledged* and *authenticated* conformably with the following provisions:

SEC. 31. Proof of real estate title, and other private writings, when acknowledged.

In the case of *other private writings*, except last wills and testaments, *acknowledged* or proved and certified in the manner provided by law for the acknowledgment or proof of instruments conveying real property, the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing in the same manner as if it were a conveyance of real property.

Acknowledgment may be before any *officer* in the foreign service of the Philippines or before *notary public*:

SEC. 2. An instrument or document acknowledged and authenticated in a foreign country shall be considered authentic if the acknowledgment and authentication are made in accordance with the following requirements:

(a) The acknowledgment shall be made before (1) an ambassador, minister, secretary of legation, chargé d'affaires, consul, vice-consul or consular agent of the Republic of the Philippines, acting within the country or place to which he is accredited, or (2) a notary public or officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. (Act No. 2103).

Form of acknowledgment before notary public (Sec. 31, Rule 132 in relation to sec. 127, Act No. 496 as amended by Sec. 1 (5) and (6), Act No. 700, Act No. 3362, and Act No. 3439).

ACKNOWLEDGMENT

State of

County of

Before me a notary public for and in(place) personally appeared(name or names of persons executing instrument) known to me and to me known to be the same person (or persons) who executed the foregoing instrument, and acknowledged to me that the foregoing instrument,

consisting of pages, has been signed by him (or them) in the presence of his (or their) two instrumental witnesses, and that he (or they) as well as his (or their) instrumental witnesses have signed each and every page of the instrument, and that the foregoing instrument is his (or their) free act and deed.

..... (Person or persons executing document) exhibited to me his (or their) (identifying cards such as residence certificates, if any, social security cards, etc.) bearing number issued on (date) at (place).

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal (if any) this day of (month), 196....., in (place).

Notary Public

My commission expires (date)

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(AUTHENTICATION OR ATTESTATION)

Contents of authentication

(b) In case the acknowledgment is made before a *notary public* or an officer mentioned in subdivision (2) of the preceding paragraph, the certificate of the notary public or the officer taking the acknowledgment shall be authenticated by an ambassador, minister, secretary of legation, chargé d'affaires, consul, vice-consul or consular agent of the Republic of the Philippines acting within the country or place to which he is accredited. The officer making the authentication shall certify under his official seal that the person who took the acknowledgment was at the time duly exercising the functions of the office by virtue of which he assumed to act, and that as such he had authority under the law to take acknowledgment of instruments or documents in the place where the acknowledgment was taken, and that his signature and seal, if any, are genuine. (Act No. 2103, section 2, sub-par. (b)).

If the private writing or agreement is not executed in the manner above-mentioned, then its due execution and authenticity must have to be proved either:

- (a) By anyone who saw the writing executed;
- (b) By evidence of the genuineness of the handwriting of the maker; or
- (c) By a subscribing witness. (Sec. 21, Rule 132, Rules of Court).

In addition to said private writing or agreement, proof or evidence of the law of the country or state of the respondent should be submitted. (see par. 3, *Supra*).

In the event that parol evidence or testimony of witness becomes necessary in the course of the court action, same could be obtained by deposition or by written interrogatories or both. The pertinent rules of court of the Philippines governing their use and manner of preparation are herewith attached as Appendix "1". Attached also [in this letter] is the form of a Special Power of Attorney to be executed by the claimant in favor of the Receiving Agent as provided in section 3, Article 3 of the Convention.

APPENDIX "1"

Additional Evidence During Pendency of Action:

How Obtained:

In the event additional evidence becomes necessary in the course of action in court, same will be obtained either by deposition or by written interrogatories, or both, and the following are the pertinent provisions of Rule 24 of the Philippine Revised Rules of Court on the matter:

Section 1. *Depositions pending action, when may be taken.* By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 23. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Section 11. *Persons before whom depositions may be taken in foreign countries.* In a foreign state or country, depositions shall be taken (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines, or (b) before such person or officer as may be appointed by commission or under letters rogatory.

Section 12. *Commission or letters rogatory.* A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

Section 13. *Disqualification by interest.* No deposition shall be taken before a person who is a relative within the sixth degree of consanguinity or affinity, or employee or attorney of any of the parties; or who is a relative within the same degree, or employee of such attorney; or who is financially interested in the action.

Section 14. *Stipulations regarding taking of deposition.* If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions.

Section 15. *Deposition upon oral examinations; notice; time and place.* A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

Section 17. *Record of examination; oath; objections.* The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officers, who shall propound them to the witness and record the answers verbatim.

Section 19. *Submission to witness; changes; signing.* When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition

is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under section 29(f) of this rule, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

Section 20. *Certification and filing by officer.* The officer shall certify on the deposition that the witness was duly sworn to by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

Section 21. *Notice of filing.* The officer taking the deposition shall give prompt notice of its filing to all the parties.

Section 25. *Deposition upon written interrogatories; service of notice and of interrogatories.* - A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter the latter may serve re-direct interrogatories upon a party who has served cross-interrogatories. Within three (3) days after being served with re-direct interrogatories, a party may serve recross-interrogatories upon the party proposing to take the deposition.

Section 26. *Officers to take responses and prepare record.* A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by sections 17, 19 and 20 of this rule, to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

Section 27. *Notice of filing and furnishing copies.* When a deposition upon interrogatories is filed, the officer taking it shall promptly give notice thereof to all the parties, and may furnish copies to them or to the deponent upon payment of reasonable charges therefor.

Section 29. *Effect of errors and irregularities in depositions.*

(a) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) *As to competency or relevancy of evidence.* Objections to the competency of a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) *As to oral examination and other particulars.* Errors and irregularities occurring at the oral examination in the manner of taking the deposition in form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, removed, or cured if promptly prosecuted, are waived unless reasonable objection thereto is made at the taking of the deposition.

(e) *As to form of written interrogatories.* Objections to the form of written interrogatories submitted under sections 25 and 26 of this rule are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding cross or other interrogatories and within three (3) days after service of the last interrogatories authorized.

(f) *As to manner of preparation.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under sections 15 to 26 of this rule are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

APPENDIX "2"

Special power of Attorney

KNOW ALL MEN BY THESE PRESENTS:

That I, _____, of legal age, single/married to _____ and a resident of _____ do hereby appoint, name and constitute the Solicitor General of the Philippines to be my true and lawful attorney in my name and in my behalf, to do and execute all or any of the following acts, deeds and things, namely:

1. To demand, collect and receive from _____ (name of respondent) any and all sums of money which are now or may hereafter become due me by reason of my rightful claim for maintenance or support for myself and/or my dependent children _____, and to give receipt or acknowledgment of such sums so received;

2. To institute in my name an action in any court of the Philippines for the enforcement of my above-mentioned claim and for this purpose, to take whatever measures may be deemed by him necessary, including the taking of an appeal to the proper appellate court, for the prosecution of the action to its final termination;

3. To enter into a reasonable compromise of my above-mentioned claim after prior consultation with me and my authorization in writing;

4. In general to do all other acts and things whatsoever that may be deemed by him necessary and/or expedient in order to carry out the powers herein granted, as fully and effectively to all intents and purposes as I could do in my own proper person if personally present;

5. To delegate, on such terms as he shall think fit, any or all of the powers herein granted in favor of any person whom said attorney may select, and to revoke any such appointment, and to substitute or appoint another in his stead;

6. HEREBY GIVING AND GRANTING unto my said attorney full power and authority whatsoever requisite or necessary or proper to be done in or about the premises, as fully to all intents and purposes as I might or could lawfully do if personally present, with power of substitution and revocation, and hereby ratifying and confirming all that my said attorney or his substitute shall do or cause to be done under and by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto affixed my signature in the presence of my two uninterested witnesses this _____ day of _____, 1968 in _____

_____ Grantor or Trustee_____

SIGNED IN THE PRESENCE OF:

Acknowledgment

Before me a notary public for and in (place)..... personally appeared known to me and to me known to be the same person who executed the foregoing instrument, and acknowledged to me that he signed each and every page of the document in the presence of his two witrnstrumental witnesses who also signed each and every page of the instrument, and that the foregoing instrument, which consists of pages including this page on which this acknowledgment is written, is his (or her) free act and deed.

In Witness Whereof, I have hereunto affixed my hand and seal (if any) this day of, 196....., in the

NOTARY PUBLIC

My Commission expires

Doc. No.
Page No.
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Authentication

(See contents of authentication in letter)".

F. TOETREDING

Zie *Trb.* 1957, 121 en *Trb.* 1962, 106.

Behalve de aldaar genoemde hebben nog de volgende Staten, overeenkomstig artikel 13, lid 3, van het Verdrag, een akte van toetreding bij de Secretaris-Generaal der Verenigde Naties nedergelegd:

Boven-Volta	27 augustus 1962
Finland ¹⁾	13 september 1962
de Centraalafrikaanse Republiek	15 oktober 1962
Portugal ²⁾	25 januari 1965
Niger ³⁾	15 februari 1965
België ⁴⁾	1 juli 1966
Spanje ⁵⁾	6 oktober 1966
Tunesië ⁶⁾	16 oktober 1968

1) Het Ministerie van Buitenlandse Zaken is door de Finse Regering aangewezen als verzendende en ontvangende instelling in de zin van artikel 2, leden 1 en 2, van het Verdrag, alsmede als de instelling, tot wie overeenkomstig artikel 7, onder a, van het Verdrag, rogatoire commissies kunnen worden gericht.

2) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Portugese Regering als verzendende instelling aangewezen de „Direcção Geral de Justiça” in het metropolitaine deel van Portugal, en de „Direcção Geral dos Serviços da Administração Civil” in de overzeese provincies, en als ontvangende instelling de „Instituto de Assistência à Família” in het metropolitaine deel van Portugal, en de „Procuradoria da Republica” in elk rechterlijk district in iedere provincie alsmede de door deze gemachtigden.

3) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Regering van Niger als verzendende instelling aangewezen de Minister van Justitie en als ontvangende instelling de „Caisse Nationale de Compensation des Prestations Familiales et des Accidents du Travail”.

4) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Belgische Regering als verzendende en ontvangende instelling aangewezen het Ministerie van Justitie.

Ter uitvoering van artikel 3, lid 2, van het Verdrag, heeft de Belgische Regering de volgende verklaring gericht tot de Secretaris-Generaal der Verenigde Naties:

„Outre les éléments prévus à l'article 3, paragraphe 4, de la Convention, il conviendra que le créancier fasse connaître le montant de sa demande et y joigne des documents officiels établissant les liens de famille et les charges familiales ainsi qu'une procuration qui autorise l'Institution intermédiaire à agir en son nom ou à désigner une personne habilitée à agir de même.

Cette procuration devra, également, stipuler:

- le montant de la demande,
- le mandat en vue de pouvoir interjeter appel de la décision,
- le mandat en vue de poursuivre l'exécution,
- le mandat en vue de transiger, avant décision sur une base à fixer.

Les renseignements visés devront être fournis suivant le modèle qui est joint en annexe.

En ce qui concerne les documents justificatifs de l'indigence en vue de l'assistance judiciaire et de la procédure gratuite, il convient de s'en référer à l'Article 39 de la loi du 29 juin 1929 sur l'assistance judiciaire et la procédure gratuite, qui est libellé comme suit:

„Le requérant résidant à l'étranger fait parvenir sa demande en double au bureau ou au juge, en joignant les documents justificatifs de son indigence tels qu'ils sont exigés par la loi du pays où il réside.

„Si dans ce pays aucune loi ne règle la matière, ou s'il n'est pas possible de se conformer à la loi qui y est en vigueur, il joint à sa demande une déclaration affirmée devant l'agent consulaire belge du lieu de sa résidence; cette déclaration contient l'indication de la résidence du requérant et l'énumération détaillée de ses moyens d'existence et de ses charges”.

ROYAUME DE BELGIQUE

Ministère de la Justice
Bruxelles (Belgique)

Convention sur le recouvrement des aliments à l'étranger, faite à New-York, le 20 juin 1956.

Procuracion

Je soussigné (nom, prénoms, profession)

demeurant à
donne pouvoir à M. l'avocat (1)
notamment en vue de:

- après avoir sollicité s'il y a lieu le bénéfice de l'assistance judiciaire gratuite,
- procéder à une demande de perception des revenus ou produits du travail de (2) ou des autres sommes lui revenant.
- procéder à une action en paiement d'aliments à charge de (3) se concilier, transiger, appeler, prendre communication de tous titres et pièces, faire mettre à exécution les décisions intervenues, faire toutes plaintes ou suivre celles intentées, faire tous actes d'administration nécessaires, quoique non prévus par les présentes, promettant ratification.

Ainsi dressé à le
(signature)

Légalisation de la signature
ci-dessus”.

(1) Laisser en blanc si, en raison de son indigence, le requérant ou la requérante sollicite la désignation d'un avocat par le Bureau de la consultation gratuite ou si le requérant ou la requérante n'a pas d'avocat de son choix.

(2) Préciser l'identité du débiteur qui ne peut être que le conjoint.

(3) Préciser l'identité du débiteur.

5) In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Spaanse Regering als verzendende en ontvangende instelling aangewezen het Ministerie van Justitie.

Ter uitvoering van artikel 3, lid 2, van het Verdrag, heeft de Spaanse Regering de volgende verklaring gericht tot de Secretaris-Generaal der Verenigde Naties:

"In Spanish law there are two types of procedure which may be used in connection with a maintenance action:

I. *Suit for temporary maintenance*

This special procedure is used only to obtain a provisional judgement the final judgement being pronounced only in a declaratory suit of the type corresponding to the amount claimed. The requirements for this procedure are as follows:

1. The claim must set forth the remedy sought in the action, that is, the basic claim which the claimant wants to have settled, and it must be accompanied by *documents fully supporting the grounds* on which the claim is based. These grounds are of two kinds:

(a) Those supporting the right to maintenance:

- (i) If the claim is based on a *legal right founded on ties of relationship*, documents proving that relationship must be submitted.
- (ii) If the claim is based on other circumstances, and more particularly on a contractual agreement, it must be accompanied by the document containing the agreement concerned.

The claim may, if necessary, also be substantiated by testimony.

(b) *Those supporting the amount of maintenance*

The claimant must also offer to provide proof of the approximate amount of the respondent's assets, income, wages or pension and of the claimant's own need for maintenance.

II. *Suit for permanent maintenance*

If permanent maintenance is being sought, the claimant must have recourse to an ordinary declaratory suit of the type corresponding to the amount of maintenance claimed. Owing to the many different types of action that may be brought in such suits, the evidence required as proof of the claim is not specified. It may, however, be concluded that this evidence is the same as that mentioned in the previous section, since, generally speaking, article 504 of the Act provides that all claims must be accompanied by the *document or documents on which the claimant bases his rights*.

III. *General requirements*

No matter what type of suit is brought, the party must, as a general rule, be represented by a proctor legally authorized to plead in the court which hears the case and possessing a power of attorney declared sufficient by a lawyer. The power of attorney must be accompanied by the initial petition, which may not be acted upon in the absence of such power even if it contains a promise that the power will be submitted (article 3 of the Civil Procedure Act). According to the provisions of article 4, paragraph 4, of that Act, it is not mandatory for the proctor to participate in a suit for temporary maintenance; if, however, the parties do not plead their own cases, they must be represented by a proctor and not by a person who does not hold office.

For these reasons the power of attorney referred to in article 3, paragraph 3, of the Convention should authorize the Receiving Agency to *transfer its power to a proctor (procurador)*.

In conformity with the provisions of article 600 of the Civil Procedure Act, which is applicable pursuant to article 6, paragraph 3, of the Convention, documents executed abroad must meet the following requirements:

1. The subject or content of the act or agreement must be legal and allowable under Spanish law.
2. The person executing the document must be qualified and legally authorized to bind himself under the law of his own country.
3. The document must have been executed in accordance with the prescribed forms and procedures of the country in which the act or agreement originated.
4. The document must be authenticated and must meet the other requirements essential to its authenticity in Spain.

Article 601 provides that a document in any language other than Spanish must be accompanied by a translation.

As can be seen, the evidence required under Spanish law, even in its formal aspects, is substantially the same as that mentioned in the Convention (art. 3, par. 4).

IV. Exemption from payment of costs on grounds of indigence

Exemption from payment of costs requires a prior declaration of indigence. Such declaration may be of the legal or judicial type or be issued by some other authority.

A declaration of the legal type is one that is prescribed by law and refers not to individuals but to bodies corporate, and to a special category of the latter, namely charitable institutions. If an institution is entitled to an exemption from payment of costs but there is no specific legal provision to that effect, a declaration of the judicial type is required for the exemption to become effective.

A declaration of the judicial type is the normal method of obtaining an exemption from the payment of costs on grounds of indigence; such declaration is obtained in conformity with the requirements and procedures laid down in the Civil Procedure Act.

In order that a claim for exemption from the payment of costs can be drawn up, the application made to the Transmitting Agency must contain the following particulars:

1. The nationality of the claimant, his present address and his addresses during the preceding five years.
2. His marital status, age, occupation and means of subsistence.
3. If he is married or widowed, the name and nationality of his spouse and children.
4. The house or flat in which he resides, including the street name and number and the rent which he pays.
5. The property of his spouse and children of which he is the usufructuary and the income derived therefrom.
6. The certification by the competent authority or official that the claimant has paid no tax of any kind in the current or preceding financial year or that he does pay tax (in the latter case, the amount of the tax must be stated, and receipts for the last quarter for which taxes were paid must be enclosed); and a certification, where applicable, that the claimant is or is not entered on the electoral rolls and, if so, in what capacity.

A certificate of indigence may also be issued by foreign authorities when the litigant is not a Spanish citizen and when this has been provided for in an international convention.

In such cases the application need be accompanied only by the document authorizing the exemption.

ANNEX

I. Book II, title XVIII, of the Civil Procedure Act (Temporary maintenance).

Article 1,609. A person who considers himself entitled to temporary maintenance shall submit a claim therefor, which shall be accompanied by documents fully supporting the grounds on which the claim is based.

If the claim is based on a legal right, the documents to be submitted shall provide proof of the ties of relationship existing between the claimant and the respondent or of the circumstances granting entitlement to maintenance, and the claimant shall, if necessary, offer to supplement such proof with the testimony of witnesses.

He shall also offer to provide proof of the approximate amount of the respondent's assets, income, wages or pension and of the claimant's own need for maintenance.

The claim and the documents shall be accompanied by copies thereof on ordinary paper.

Article 1,610. The Judge shall not admit the claim unless it is accompanied by the documents specified in the preceding article.

II. Book I, title I, section II, of the Civil Procedure Act (Legal defence of the indigent).

Article 13. Justice shall be rendered free of charge to indigent persons whom the courts declare to be entitled to that benefit.

Article 14. A person who has been declared indigent shall be granted the privilege of: (1) using for his defence stamped paper reserved for indigent persons; (2) having a lawyer and proctor appointed for him without being required to pay them a fee; (3) an exemption from the payment of any kind of fees to court employees; (4) giving a verbal pledge to pay if his fortunes improve, instead of being obliged to make the deposits required for the lodging of an appeal; (5) having the letters of request and any other official communications relating to his suit despatched and executed at his request.

Article 15. A person may be declared indigent only if:

(1) He lives on a irregular wage or salary.

(2) He lives solely on a regular wage or salary, irrespective of its source, which is not more than twice the wage of a labourer at the place where the person is habitually resident.

A person whose wage or salary is more than twice but not more than three times the wage of a labourer shall be entitled to a 50 per cent allowance in respect of all the benefits referred to in article 14.

(3) He lives solely on unearned income or income derived from agricultural activities, which does not exceed the equivalent of the wages of two labourers at the place where the person is habitually resident. If such income exceeds the wages of two but not of three labourers, the person shall be entitled to the 50 per cent allowance provided for in the preceding paragraph.

(4) He lives solely on income derived from the exercise of an industrial or commercial activity on which he pays to the Treasury a tax based on a net profit that is no more than twice the amount of the local wage of a labourer. A person paying a tax which exceeds the above limit by no more than 10 per cent shall be entitled to the 50 per cent allowance provided for in paragraphs 2 and 3.

(5) All his property has been attached or legally assigned to his creditors and his wages, salary or income derived from the exercise of a profession or an industrial or commercial activity does not exceed the limits specified in the preceding paragraphs. In such cases, if the attachment is revoked or some property remains after the creditors have been paid, the balance shall be applied to the costs incurred in connexion with the free legal aid provided to the debtor on grounds of indigence.

Article 16. Where a person relies on two or more of the means of livelihood referred to in the preceding article, the income derived from all of them shall be computed, and if the total exceeds the limits prescribed in the said article, the person shall not be entitled to free legal aid on grounds of indigence.

Article 17. A person coming within any of the categories set out in article 15 shall not be entitled to free legal aid on grounds of indigence if, in the opinion of the Judge, the number of servants employed by that person, the rent of the dwelling in which he resides or any other external signs make it appear that his resources amount to more than twice the local wage of a labourer; he shall also be denied the 50 per cent allowance if the said external signs indicate that his resources may amount to more than three times that wage. On the other hand, the Judge may, in view of the family circumstances, number of children, state of health, debts, and so on of the person applying for a declaration of indigence, grant him the benefit of the free legal aid and the allowances aforesaid if his means of subsistence exceed by less than 50 per cent the limits set forth in articles 15 and 16.

Article 18. Free legal aid on grounds of indigence shall also be denied to a litigant whose income, combined with that of his spouse or with the proceeds from the property of his children, of which he is the usufructuary, equals a sum equivalent to the wages of three labourers at the place which the family is habitually resident. If the said income and proceeds exceed the wages of three but not of four labourers, the 50 per cent allowance established in the preceding articles shall be granted. The provisions of this article shall be without prejudice to the discretionary powers granted to the Judge by virtue of article 17.

Article 19. Where two or more persons who are individually entitled to free legal aid on grounds of indigence are joint parties to a suit, they shall be accorded such aid even though their combined means of subsistence exceed the aforementioned limits.

Article 20. Free legal aid on grounds of indigence shall be granted only in respect of suits involving the rights of the grantee.

An assignee who is entitled to such aid cannot avail himself thereof in suits involving the rights of the assignor or rights acquired from a third party who is not entitled to such aid, except in the case of rights acquired through inheritance.

Article 21. The declaration of indigence shall always be requested of the Judge or Court dealing with or competent to deal with the suit or matter in respect of which free legal aid is being sought, and such declaration shall be considered a question incidental to the main proceedings.

Article 22. Where a person requests free legal aid on grounds of indigence in order to bring an action, the action shall be delayed until a decision has been taken on the incidental question of the declaration of indigence.

The Judge shall, however, permit the institution of proceedings without assessing costs where postponement might cause the plaintiff irreparable harm, but he shall suspend the suit immediately afterwards.

Article 23. Where the plaintiff or the defendant requests free legal aid on grounds of indigence, either when or after the suit is contested, he shall submit evidence supporting his claim to such aid in a separate document, which shall be drawn up at his expense.

In such event, the suit may be suspended only with the consent of both parties.

Article 24. Where the plaintiff has not requested free legal aid on grounds of indigence before bringing the action but does so afterwards, such aid shall not be granted unless he can fully prove that he became indigent after bringing the action.

Article 25. If a litigant who was not granted free legal aid on grounds of indigence in the first instance claims such aid in the second instance, he must prove that he became indigent during or after the proceedings in the court of first instance. If he cannot produce full proof, he shall be denied free legal aid.

Article 26. The provisions of the preceding article shall likewise apply where a person who has not been granted free legal aid on grounds of indigence in the second instance requests such aid in order to file or pursue an appeal for reversal.

In such cases the person making such request shall not be exempt from payment of the deposit unless he submitted the request prior to the summons to hear sentence pronounced in the court of second instance.

Article 27. Any person applying in due form for a declaration of indigence shall subsequently be granted free legal aid, and a lawyer and proctor shall, at his request, be appointed for him by the Court, without prejudice to whatever final decision is taken on the declaration of indigence.

A lawyer and a proctor shall also be appointed by the Court for a person, at his request, who wishes to file a claim for a declaration of indigence.

Article 28. The claim shall be drawn up in conformity with the provisions of article 524 regarding ordinary claims, and shall also contain the following particulars:

1. The nationality of the claimant, his present address, and his addresses during the preceding five years.
2. His marital status, age, occupation and means of subsistence.
3. If he is married or widowed, the name and nationality of his spouse and children.
4. The house or flat in which he resides, including the street name and number and the rent which he pays.
5. The property of his spouse and children of which he is the usufructuary and the income derived therefrom.
6. The certification by the competent authority or official that the claimant has paid no tax of any kind in the current or preceding financial year or that he does pay tax (in the latter case, the amount of the tax must be stated, and receipts for the last quarter for which taxes were paid must be enclosed); and a certification, where applicable, that the claimant is or is not entered on the electoral rolls and, if so, in what capacity.

Article 29. No action shall be taken on a claim which fails to meet the requirements laid down in the preceding article.

If the claimant contends that he has been unable to obtain the certifications mentioned in item 6 of the said article, the Judge shall request them on the authority of the court, but no action shall be taken on the claim until they have been obtained." (*V.N.-vertaling*)

6) Onder de volgende voorbehouden:

"1) Persons living abroad may only claim the advantages provided for in the Convention when considered non-residents under the exchange regulations in force in Tunisia,

2) A dispute may only be referred to the International Court of Justice with the agreement of all the parties to the dispute." (*V.N.-vertaling*)

In de zin van artikel 2, leden 1 en 2, van het Verdrag, heeft de Tunesische Regering als verzendende en ontvangende instelling aangewezen het Directoraat voor Consulaire Aangelegenheden van het Staatssecretariaat voor Buitenlandse Zaken.

Ter uitvoering van artikel 3, lid 2, van het Verdrag, heeft de Tunesische Regering de volgende verklaring afgelegd:

„Le demandeur doit établir le rapport juridique qui existerait entre le défendeur et lui-même. Dans la majorité des cas il s'agira de liens nés du mariage ou de la filiation qui se prouvent soit par des actes de l'état civil, soit par un jugement. En dehors du mariage ou de la filiation, l'obligation alimentaire peut avoir sa source dans un engagement volontaire qui peut être un acte sous seing privé.".

G. INWERKINGTREDING

Zie *Trb.* 1957, 121 en *Trb.* 1962, 106.

J. GEGEVENS

Zie *Trb.* 1957, 121 en *Trb.* 1962, 106.

Voor het op 26 juni 1945 te San Francisco tot stand gekomen Handvest der Verenigde Naties zie ook, laatstelijk, *Trb.* 1968, 107.

Voor het op 26 juni 1945 te San Francisco tot stand gekomen Statuut van het Internationale Gerechtshof zie ook *Trb.* 1965, 171.

Voor het op 24 oktober 1956 te 's-Gravenhage tot stand gekomen Verdrag nopens de wet welke op alimentatieverplichtingen jegens kinderen toepasselijk is zie ook, laatstelijk, *Trb.* 1967, 33.

Op 15 april 1958 is te 's-Gravenhage voor ondertekening opgesteld het Verdrag nopens de erkenning en de tenuitvoerlegging van beslissingen over onderhoudsverplichtingen jegens kinderen. Tekst en vertaling van het Verdrag zijn geplaatst in *Trb.* 1959, 187; zie ook, laatstelijk, *Trb.* 1968, 119.

Uitgegeven de vierde februari 1969.

De Minister van Buitenlandse Zaken,

J. LUNS.