

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1970 Nr. 31

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, *Trb.* 1962, 106 en *Trb.* 1969, 2 ¹⁾.

Behalve de aldaar genoemde Staten heeft nog de volgende Staat,
overeenkomstig artikel 13, lid 2, van het Verdrag, een akte van be-
krachtiging bij de Secretaris-Generaal der Verenigde Naties nederge-
legd:

Oostenrijk²⁾ 16 juli 1969

¹⁾ De Regering van **Brazilië** heeft overeenkomstig artikel 2, lid 3, van het Ver-
drag op 13 februari 1969 aan de Secretaris-Generaal van de Verenigde Naties
medegedeeld dat de „Procuradoria Geral da República” (Attorney General's
Office) is aangewezen als verzendende en ontvangende instelling (vergelijk *Trb.*
1969, 2, blz. 2).

Ter uitvoering van artikel 3, lid 2, van het Verdrag heeft de Braziliaanse
Regering de volgende verklaring gericht tot de Secretaris-Generaal van de Ver-
enigde Naties:

*"Act No. 5, 478 of 25 July 1968
concerning actions for maintenance and other provisions*

I, the President of the Republic,

Hereby announce that the National Congress decrees, and I approve, the following Act:

Art. 1. Actions for maintenance shall be governed by a special procedure, independently of any prior allocation of the case or prior granting of free legal aid.

1. The allocation of such cases shall be determined subsequently by the Court and registered accordingly.

2. Any party who is unable to pay legal costs without prejudicing his own support or that of his family shall be given free legal aid merely by pleading such inability in court; the penalty for misrepresentation shall be payment of up to ten times the costs.

3. Under this Act, any person who pleads poverty shall be presumed to be unable to pay until proved otherwise.

4. An action for maintenance shall not be suspended because entitlement to free legal aid has been challenged; the question of entitlement shall be dealt with in separate proceedings.

Art. 2. The claimant, either in person or through counsel, shall address himself to the competent judge, identify himself and explain his needs; he must establish only the relationship or obligation to provide maintenance of the debtor, indicating his Christian name and surname, residence or place of work, profession, nationality and approximate income or available resources.

1. The initial production of documentary evidence shall be waived:

- (i) Where the information is available in bills, records, public offices or institutions, and the production of certified copies would entail difficulty or delay;
- (ii) Where they are in the possession of the respondent responsible for providing maintenance or of a third party whose whereabouts are uncertain or unknown.

2. The authentication of signatures shall be waived in the case of public documents.

3. If the claimant appears in person and does not specify a legal adviser who has agreed to assist him, the judge shall immediately designate counsel.

Art. 3. Claims shall be submitted in writing, in triplicate, and must indicate the judge to whom they are addressed, and contain the information specified in the preceding article and a summary of the facts.

1. If counsel has been designated by the judge to assist the claimant, as specified in article 2, the counsel designated shall prepare the claim in writing within twenty-four (24) hours of his appointment; he may, if he deems this appropriate, present the oral claim in the form of a written deposition.

2. The deposition mentioned in the preceding paragraph shall be drawn up in triplicate, dated and signed by the court clerk, and shall conform, so far as possible, to the provisions of the main body of this article.

Art. 4. When the claim is filed, the judge shall immediately determine provisional payments to be paid by the respondent, unless the claimant expressly states that they are unnecessary.

Sole paragraph. If provisional maintenance is requested by a spouse married under the regime of common marital estate, the judge shall also determine that a portion of the cash income from the joint property administered by the respondent shall be paid monthly to the claimant.

Art. 5. Within forty-eight (48) hours, the court clerk shall transmit to the respondent the second copy of the claim or deposition, together with a copy of the decision of the judge and notification of the date and time of the hearing.

1. In scheduling the hearing, the judge shall allow a reasonable amount of time for the respondent to contest the proposed action and, if necessary, for a summons to be served.

2. The notification, which shall be sent by registered post, free of charge, with a certificate of receipt, shall be deemed to constitute a summons for all legal purposes.

3. If the respondent refuses delivery of the summons or cannot be found, the procedure shall be repeated by a bailiff using the third copy of the petition or deposition as a writ.

4. If the summons cannot be served on the respondent for any of the above reasons, he shall be summoned by means of a notice affixed to the court house and published three (3) consecutive times in the official gazette of the State, at the expense of the losing party, the bill having previously been filed in the dossier.

5. The notice must contain a summary of the initial claim, the full text of the decision entered on it and the date and time of the hearing.

6. The plaintiff shall be notified of the date and time of the hearing during the filing of the petition or the preparation of the deposition.

7. The judge, when setting the date of the hearing, shall address an official communication to the respondent's employer, or, if the respondent is the public employ, to the head of his bureau, requesting information to be submitted on the respondent's wages or earnings not later than the date set for the hearing, under pain of the penalties prescribed in article 22 of this Act.

8. Even in the cases covered by articles 175 and 176 of the Code of Civil Procedure, the respondent shall be summoned in accordance with article 5, paragraph 2, of this Act.

Art. 6. The claimant and respondent must be present at the hearing at which the settlement is reached or judgement given, regardless of whether their representatives have been informed or appear.

Art. 7. If the claimant fails to appear, the claim shall be filed; absence of the respondent shall be deemed to constitute contempt of court in addition to admission of guilt.

Art. 8. The claimant and respondent shall appear at the hearing accompanied by their witnesses, of whom there shall be not more than three (3), and shall submit any further testimony at that time.

Art. 9. At the hearing, after the claim or deposition and the answer, if any, have been read, or after reading has been waived, the judge shall hear the parties to the dispute and the representative of the *Ministério Público*, who shall propose a settlement.

1. If agreement is reached, the terms of the settlement shall be drawn up and signed by the judge, the court clerk, the parties and the representatives of the *Ministério Público*.

2. If there is no agreement, the judge shall take the affidavits of the parties and witnesses; after the hearing of experts, if any, he may decide the case without the aforementioned production of evidence, if the parties so agree.

Art. 10. The hearing shall be continuous, but if it is impossible for reasons of *force majeure*, to conclude it on the same day, the judge shall set the first free day for its continuation, whether or not further notification is given.

Art. 11. After the preliminary examination, the parties and the *Ministério Público* may make final statements, each lasting no more than ten (10) minutes.

Sole paragraph. The judge shall then repeat the proposal for a settlement; if the settlement is not accepted, he shall pronounce his decision, which shall include a brief summing up of the hearing.

Art. 12. The parties shall be informed of the decision either personally or through their representatives at the hearing itself or, if absent, when notified of the hearing.

Art. 13. The provisions of this Act shall apply, so far as appropriate, to ordinary actions for separation, or for the dissolution or annulment of the marriage bond, to the review of decisions on claims for maintenance and to the execution of such decisions.

1. The original decision on provisional maintenance may be reviewed at any time, if there is a change in the financial circumstances of the parties, but the claim shall be processed separately in every case.

2. The maintenance determined shall in any case be payable retroactively to the date of the summons.

3. Provisional maintenance shall remain payable until the final decision, including the ruling on any extraordinary appeal.

Art. 14. The final decision of the judge, including decisions on separate proceedings, shall be subject to appeal in respect of the substance of the case.

Art. 15. Judicial decisions on maintenance shall not be irrevocable and may be reviewed at any time if there is a change in the financial circumstances of the interested parties.

Art. 16. The provisions of article 919 and sole paragraph of the Code of Civil Procedure shall apply in the execution of any decision or settlement in actions for maintenance.

Art. 17. When it is impossible to carry out the decision or settlement by means of payroll deductions, the payments may be collected from rent from properties or from any other income of the respondent, which shall be paid directly to the claimant or to a trustee appointed by the judge.

Art. 18. If, in these circumstances, it remains impossible to discharge maintenance obligations, the judge shall apply the provisions of article 920 of the Code of Civil Procedure.

Art. 19. The judge, in his preliminary examination of the case or in the execution of the decision or settlement, may take any measures necessary to inform himself of the facts or to implement the decision or settlement; such measures may include sentencing the respondent to up to sixty (60) days' imprisonment.

1. Article 921 of the Code of Civil Procedure (Legislative Decree No. 1, 608, of 18 September 1939) shall apply as follows:

Art. 921. Completion of the full term of imprisonment shall not exempt the debtor from the obligation to pay the maintenance then due and unpaid or coming due.

2. The decision to sentence the respondent to prison shall be subject to appeal.

3. Article 843, paragraph 2, of the Code of Civil Procedure (Legislative Decree No. 1, 608, of 18 September 1939), shall apply as follows:

2. In the cases provided for in sub-paragraph VI, except in the case of decisions relating to claims for or payment of maintenance, and in sub-paragraphs XI en XVII, the judge shall suspend the proceedings if it is impossible to suspend only the execution of the decision.

Art. 20. Government offices, civil or military, including the Income Tax Bureau, shall provide all information necessary for the proceedings referred to in this Act for the execution of the decision or settlement reached in court.

Art. 21. Article 244 of the Criminal Code shall apply as follows:

Art. 244. Failure, without good and sufficient cause, to provide support for a spouse, for a child under eighteen years of age or unfit for work, or for a disabled or infirm ascendant, by withholding of the necessary funds or by defaulting on the payment of maintenance which has been agreed, determined or increased by law, or failure, without good and sufficient cause, to aid a seriously ill descendant or ascendant, shall be punishable as follows:

Penalty: One (1) to four (4) years' detention and a fine of from one to ten times the highest minimum wage in effect in the country.

Sole paragraph. The same penalties shall be applicable to any solvent person who in any way whatsoever, including unjustified abandonment of his employment or post, prevents or evades the payment of maintenance which has been agreed, determined or increased by law".

Art. 22. Failure on the part of an employer or an official in the public employ to provide the competent court with the information necessary for examining the case or executing the decision or settlement in respect of maintenance shall constitute the offence of obstruction of the due process of law.

Penalty: Six (6) months' to one (1) year's detention without prejudice to the accessory penalty of thirty (30) to ninety (90) days' suspension from employment.

Sole paragraph. The same penalties shall be applicable to any person who, in any way whatsoever, aids and abets the respondent in evading the payment of maintenance agreed, determined or increased by law, or who refuses to carry out or delays in carrying out an order from the competent judge to make payroll deductions.

Art. 23. The five-year limitation referred to in article 178, paragraph 10, subparagraph I, of the Civil Code shall apply only to monthly payments, but not to the entitlement to maintenance, which, although irrevocable, may be temporarily waived.

Art. 24. Any person who is responsible for the support of a family and who must leave the common domicile for any reason, which need not be specified, may take the initiative of notifying the judge of his income and requesting that the claimant be summoned to appear at the hearing held in order to determine, by settlement or decision, the maintenance he will be required to provide.

Art. 25. Payment in kind, as provided for in article 403 of the Civil Code may be authorized by the judge only when agreed to by the claimant.

Art. 26. The federal court of the capital of the Brazilian Federal Unit in which the respondent resides shall be competent in the case of actions for maintenance resulting from the application of Legislative Decree No. 10 of 13 November 1958 and Decree No. 56,826 of 2 September 1965; for the purposes of these Decrees, the Office of the *Procurador-Geral da República* shall be deemed to be the transmitting agency.

Sole paragraph. Under article 2, paragraph 3, of the Convention on the Recovery Abroad of Maintenance, the Government of Brazil shall promptly communicate to the Secretary-General of the United Nations the provisions of this article.

Art. 27. The provisions of the Code of Civil Procedure shall also apply to proceedings governed by this Act.

Art. 28. This Act shall enter into force thirty (30) days after its publication.

Art. 29. All provisions inconsistent herewith are hereby repealed."

(Vertaling)

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

"Evidence normally required under Philippine law in connection with maintenance claims — United Nations Convention of 20 June 1956"

In accordance with the provisions of article 3, paragraph 2, of the Convention on the Recovery Abroad of Maintenance, done at New York on 20 June 1956, the following information is transmitted as to the requirements of Philippine law for the proof of maintenance claims:

There are no special provisions in the Rules of Court of the Philippines pertaining to actions for support, except Rule 61 which refers to actions for "support *pendente lite*". Rule 61 provides as follows:

"SEC. 1. *Application.* — The plaintiff, at the commencement of the proper action, or at any time afterwards but prior to final judgment, may file an application for support *pendente lite*, stating the grounds for the claim and the financial conditions of both parties, and shall be accompanied by affidavits, depositions or other authentic documents in support thereof.

SEC. 2. *Notice.* — Notice of the application shall be served upon the adverse party who shall have three (3) days to answer, unless a different period of time is fixed by the court.

SEC. 3. *Answer.* — The answer shall be in writing and accompanied by affidavits, depositions or other authentic documents supporting the same.

SEC. 4. *Hearing.* — After the answer is filed, or after the expiration of the time for its filing, a day will be set for hearing. The facts in issue shall be proved in the same manner as is provided in connection with motions.

SEC. 5. *Order.* — The court shall determine provisionally the pertinent facts, and shall render such order as equity and justice may require, having due regards to the necessities of the applicant, the means of the adverse party, the probable outcome of the case, and such other circumstances as may aid in the proper elucidation of the question involved. If the application is granted the court shall fix the amount of money to be provisionally paid, and the terms of payment. If the application is denied, the trial of the principal case on its merits shall be held as early as possible.

SEC. 6. *Enforcement of order.* — If defendant fails to comply with an order granting support *pendente lite*, he must be ordered to show cause why he should not be punished for contempt. Should the defendant appear to have means to pay support and refuse to pay, either an order of execution may be issued or a penalty for contempt may be imposed, or both."

The principal action for support will be governed by the rules of procedure or ordinary civil actions.

The following provisions of the Civil Code of the Philippines (Republic Act No. 386) are also pertinent:

"Art. 290. Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, according to the social position of the family.

Support also includes the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority.

Art. 291. The following are obliged to support each other to the whole extent set forth in the preceding article:

- (1) The spouses;
- (2) Legitimate ascendants and descendants;

(3) Parents and acknowledged natural children and the legitimate or illegitimate descendants of the latter;

(4) Parents and natural children by legal fiction and the legitimate and illegitimate descendants of the latter;

(5) Parents and illegitimate children who are not natural.

Brothers and sisters owe their legitimate and natural brothers and sisters, although they are only of the half-blood, the necessities for life, when by a physical or mental defect, or any other cause not imputable to the recipients the latter cannot secure their subsistence. This assistance includes, in a proper case, expenses necessary for elementary education and for professional or vocational training.

Art. 294. The claim for support, when proper and two or more persons are obliged to give it, shall be made in the following order:

(1) From the spouse;

(2) From the descendants of the nearest degree;

(3) From the ascendants, also of the nearest degree;

(4) From the brothers and sisters.

Among descendants and ascendants the order in which they are called to the intestate succession of the person who has a right to claim support shall be observed.

Art. 295. When the obligation to give support falls upon two or more persons, the payment of the same shall be divided between them in proportion to the resources of each.

However, in case of urgent need and by special circumstances the judge may order only one of them to furnish the support provisionally, without prejudice to his right to claim from the other obligors the share due from them.

When two or more recipients at the same time claim support from one and the same person legally obliged to give it, and the latter should not have sufficient means to satisfy all, the order established in the preceding article shall be followed, unless the concurrent obligees should be the spouse and a child subject to parental authority, in which case the latter shall be preferred.

Art. 296. The amount of support, in the cases referred to in the five numbers of article 291, shall be in proportion to the resources or means of the giver and to the necessities of the recipient.

Art. 298. The obligation to give support shall be demandable from the time the person who has a right to receive the same needs it for maintenance, but it shall not be paid except from the date it is extrajudicially demanded.

Payment shall be made monthly in advance, and when the recipient dies, his heirs shall not be obliged to return what he has received in advance.

Art. 300. The obligation to furnish support ceases upon the death of the obligor, even if he may be found to give it in compliance with a final judgment."

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

„*Art. 158.* Les époux se doivent mutuellement fidélité, secours, assistance. Ils sont obligés de se procurer le nécessaire l'un à l'autre.

Art. 280. Si l'époux, sur la demande duquel le divorce a été prononcé, n'a pas de revenus suffisants pour assurer sa subsistance, le tribunal pourra lui accorder, sur les biens de l'autre époux, une pension alimentaire.

Art. 301. Les dispositions des articles 265 jusqu'à 275 et 277 jusqu'à 283, ainsi que l'article 286, s'appliquent également à la séparation de corps qui aura été demandée par l'un des deux époux vis-à-vis de l'autre.

Art. 344. Le père d'un enfant naturel et désavoué est tenu de pourvoir, pendant la minorité de cet enfant, à l'entretien et à l'éducation de cet enfant à proportion de ses facultés.

Si l'enfant, à l'âge de sa majorité, n'est pas en mesure de s'entretenir pour des raisons de déficience psychique ou physique, le père conservera l'obligation de son entretien.

Les mêmes obligations reposent sur la mère lorsque l'enfant est né d'un commerce adultérin ou incestueux: les deuxième, troisième et quatrième alinéas de l'article 341 sont applicables.

Art. 344a. L'action basée sur le premier alinéa de l'article précédent est intentée auprès du tribunal d'arrondissement de la résidence de l'enfant, de la mère ou du défendeur; elle se prescrit dans les cinq années qui suivent le jour de la naissance de l'enfant.

Le conseil pour la protection des enfants est également compétent pour intenter l'action, basée sur le premier alinéa de l'article précédent, et pour faire appel d'un jugement rendu à une telle action qui a été intentée par le tuteur.

Le conseil a besoin de l'autorisation de la mère pour intenter l'action, à moins que celle-ci ne puisse déclarer sa volonté. Si la mère est mineure, l'autorisation de son représentant légal est requise.

Art. 344b. En cas d'assignation de l'action, le père est condamné à une allocation hebdomadaire, mensuelle ou trimestrielle. Si possible, les garanties qu'il doit assurer pour cette allocation sont fixées.

Le père peut aussi être condamné au paiement immédiat d'une somme, s'il y a des raisons à ce sujet.

Aucune allocation n'est due pour la période qui est antérieure de plus de cinq ans au moment de l'instance de l'action.

Art. 344c. Le père d'un enfant naturel et désavoué est tenu – même si cet enfant est mort-né – de rembourser à la mère les frais de son accouchement et de son entretien pendant les six semaines qui suivent l'accouchement.

Le dédommagement de ces frais est fixé par le juge selon toute équité et selon les usages locaux.

L'action est intentée auprès du tribunal d'arrondissement de la résidence de la mère, de l'enfant ou du défendeur.

Le droit d'action expire un an après le jour de l'accouchement.

Art. 344d. Celui qui a reconnu son obligation visée par l'article 344 et 344c peut être condamné par le tribunal, à tout stade de la procédure à verser une allocation provisoire pendant le cours du procès, sans préjudice de la possibilité, en cas d'urgence immédiate, de réclamer une allocation provisoire dans une instance en référé devant le président.

Art. 344e. Est présumé père d'un enfant désavoué celui qui, entre le 301-ème et le 179-ème jour avant la naissance, a cohabité avec la mère.

L'action intentée contre lui en vertu des articles 344 ou 344c est toutefois rejetée:

- a) s'il prouve que la mère, pendant la période en question, a eu commerce avec un autre individu, à moins qu'il ne s'avère que l'enfant n'a pas pu être conçu par ces relations;
- b) si le juge est intimement convaincu que le défendeur n'est pas le père de l'enfant.

Art. 344f. La preuve de la paternité n'est pas liée à un moyen particulier. La preuve contraire peut se faire par tous les moyens. Le serment décisive ne peut pas être demandé. L'article 1961 n'est pas applicable.

La mère qui, en tant que tutrice de son enfant, intente contre le père de cet enfant l'action visée à l'article 344, peut néanmoins être entendue comme témoin.

Avant de clore une action par une décision finale en vertu de l'article 344, premier alinéa, le juge entend le conseil pour la protection des enfants qu'il peut faire convoquer à tout stade de la procédure. La convocation est faite par le greffier et par écrit, à moins que le juge n'ordonne un autre mode de convocation.

Les audiences et les plaidoiries sont tenues à huis clos. Le jugement a lieu en audience publique.

Art. 344g. L'allocation ou la somme à payer immédiatement, visés à l'article 344b, sont versées en faveur de l'enfant au conseil pour la protection des enfants.

Art. 344h. Si une mère ne satisfait pas convenablement à l'obligation que spécifie l'article 344, troisième alinéa, l'article 468 s'applique.

Art. 344i. Lorsque le père ou la mère visés à l'article 344 ont des héritiers, ceux-ci ne peuvent être obligés, pour ce qui concerne l'entretien de l'enfant après le décès du légataire, qu'à payer immédiatement une somme qui ne dépassera pas la part légitime à laquelle l'enfant aurait eu droit en tant qu'enfant naturel et reconnu. Le tribunal fixe ce montant sur la demande de l'enfant ou du conseil pour la protection des enfants. Sous peine de forclusion, la demande doit être présentée dans l'année qui suit le décès du père ou de la mère. De plus, les articles 344a et 344d s'appliquent de façon analogue.

Art. 463. Chacun est obligé d'entretenir ses parents en ligne droite qui sont dans le besoin.

Art. 464. Les gendres et les belles-filles sont obligés d'entretenir leurs beaux-parents qui sont dans le besoin; cette obligation est réciproque.

Cette obligation n'existe pas:

- a) entre les beaux-parents et leur gendre ou leur belle-fille, si le mariage de celle-ci ou de celui-là a été dissout et si ce mariage n'a pas laissé de descendants;
- b) à l'égard d'un gendre ou d'une belle-fille dont le mariage a été dissout, après qu'une demande en divorce a été assignée contre lui ou contre elle;
- c) à l'égard d'un gendre ou d'une belle-fille contre lequel ou contre laquelle une demande de séparation de corps a été assignée, après que le jugement est passé en force de chose jugée;
- d) à l'égard d'un gendre ou d'une belle-fille qui ont été dépourvus de l'autorité sur leurs enfants légitimes et dont le mariage est dissout;
- e) à l'égard d'une belle-mère ou d'une belle-fille qui se sont remariées.

Art. 467. Les parents sont obligés, à proportion de leurs facultés, de pourvoir à l'entretien et à l'éducation de leurs enfants mineurs."

2) Bij de bekrachtiging heeft de Regering van Oostenrijk het volgende medegedeeld:

"Pursuant to article 2 of the above-mentioned Convention, the Government of Austria has designated the District Court (Bezirksgericht) exercising judicial jurisdiction in civil law matters in whose territory the clai-

mant has his permanent residence, or, if he has none in the country, his actual residence to act in its territory as Transmitting Agency. In Vienna, the District Court of the Inner City of Vienna is designated as Transmitting Agency for Districts I through XX, the District Court of Floridsdorf for Districts XXI and XXII and the District Court of Liesing for District XXIII. The Federal Ministry of Justice is designated as Receiving Agency."

Ter uitvoering van artikel 3, lid 2, van het Verdrag heeft de Oostenrijkse Regering het volgende aan de Secretaris-Generaal van de Verenigde Naties ter informatie medegedeeld:

I

A claimant bringing an action for the recovery of maintenance has to prove the respondent's legal obligation to pay maintenance.

Austrian civil procedure is subject to the principle of discretionary assessment of evidence (see Article 272 of the Code of Civil Procedure, whose wording is given in the Annex); certain exceptions exist with regard to the probative value and authenticity of public and private documents (see Articles 292 to 294 and 310 to 312 of the Code of Civil Procedure, whose wording is given in the Annex). The abovementioned principle must also be applied to the assessment of evidence for certain facts or events which have occurred abroad.

The above considerations also apply to cases where a claimant applies for a change (raise or reduction) in maintenance already being paid.

II

A decision issued by a foreign authority in a maintenance case can only be enforced if reciprocity is ensured in the manner envisaged in Article 79 of the Rules of Execution (see the wording of this Article in the Annex).

Usually, the preconditions, including the documents to be submitted, under which such enforcement can take place are laid down separately in each international agreement. Hence, no general information can be given thereon.

III

Both for the recovery of maintenance by way of action and for the enforcement of a decision issued in a foreign country with regard to a maintenance case, the submission of a power of attorney as envisaged in Article 3, paragraph 3, of the Convention is required. This power of attorney must be made out by the claimant himself, or if he is incapable of managing his affairs, by his legal representative.

If a claimant wants to avail himself of the exemption from payment of costs and charges provided under Article 9 of the Convention, a relevant application as well as a certificate of entitlement to legal aid or some other official certificate showing the claimant's income and assets must be attached to the documents submitted (cf. Article 63, paragraph 1, of the Code of Civil Procedure, whose wording is given in the Annex).

IV

In Austria, a special Federal law has been passed for the implementation within the country of the Convention. Its wording is given in the Annex.

Annex

Code of Civil Procedure, Article 272

Article 272. (1) Unless this law provides otherwise, the court, while carefully considering the results of the hearing and of the submission of evidence, shall be free to follow its persuasion in making an assessment as to whether or not a factual statement is to be considered as true.

(2) In particular, the court shall proceed in the same manner in making a ruling as to the way in which the assessment of the case is affected by any party's refusal to answer questions put to that party by the president of the tribunal or with his or the tribunal's permission.

(3) The circumstances and considerations which were decisive for the court's persuasion shall be stated in the summary of reasons attached to the court's decision.

Code of Civil Procedure, Article 292

Article 292. (1) Documents made out inside the area of territorial operation of this law by a public authority within the confines of its official powers, or by a person authorised to make public attestations within the sphere of activity attributed to him, in the prescribed form (public documents) shall establish full proof of what the authority officially decrees or declares therein, or of what the authority or the attestant testifies therein. The same shall apply to documents made out outside the area of territorial operation of this law but within the confines of their official powers by public organs subordinate to an authority which has its seat inside the area of territorial operation of this law.

(2) A proof of the untruth of the event or fact testified to or of incorrect attestation is admissible.

Code of Civil Procedure, Article 293

Article 293. (1) Other documents which are declared public documents under special legal provisions shall have the same probative value.

(2) Documents made outside the area of territorial operation of this law, and which are deemed to be public documents at the place where they have been made out, shall have the probative value of public documents inside the area of territorial operation of this law, under the proviso of reciprocity, if they show the prescribed authentications.

Code of Civil Procedure, Article 294

Article 294. Private documents, provided they show the signatures of the persons making them out, or their marks as attested by a court or a notary public, shall establish full proof that the statements contained therein originated with the persons who made out such documents.

Code of Civil Procedure, Article 310

Article 310. (1) Documents which on the grounds of their form and content appear to be public documents shall be presumed to be authentic.

(2) Where the court considers the authenticity of a document to be doubtful, it may on application by a party or *ex officio* require a statement concerning the authenticity of the document from the authority or person presumed to have made out the document. Where doubts as to the authenticity of the document cannot be removed in this way, the onus of proof of its authenticity shall lie with the party who wants to use such document as evidence.

Code of Civil Procedure, Article 311

Article 311. (1) Whether or not a document which appears to have been made out by a foreign authority or a person abroad authorised to make public attestations is to be considered authentic without further proof, shall be decided by the court at its discretion with due regard to the circumstances of the case.

(2) Unless special regulations provide otherwise, attestation by the Federal Ministry of Foreign Affairs or an Austrian minister plenipotentiary or consul shall be sufficient to prove the authenticity of such a document.

Code of Civil Procedure, Article 312

Article 312. (1) The authenticity of a private document shall be regarded as uncontested where the opponent of the party submitting evidence has failed to comment on the authenticity of the document, unless the opponent's intention to contest its authenticity is apparent from his other statements. Where a document contains a signature, the opponent of the party submitting evidence shall also comment on the authenticity of the signature, subject to the same legal effect.

(2) The burden of proof of the contested authenticity of a private document or a signature contained therein shall lie with the party who wants to use the document as evidence.

Rules of Execution, Article 79

Article 79. The enforcement or performance of particular acts of enforcement based on deeds and documents, which are not included in the subjects of execution, referred to in Article 2 *), but which have been made outside the area of the territorial operation of this law and are enforceable according to the law in force where they were made, may take place within the area of the territorial operation of this law only and to the extent that reciprocity is ensured by international treaties or by governmental notices in this matter published in the Federal Law Gazette.

*) Article 2 of the Rules of Execution refers to subjects of execution which have been established in a foreign country, but by authorities or organs subordinate to domestic authorities. This clause of Article 79 is therefore irrelevant to any consideration under Article 3, paragraph 2, of the Convention.

Code of Civil Procedure, Article 63 (1)

Article 63 (1) *) A person who is unable to meet the costs of an action without impairing his and his family's necessary livelihood shall be entitled to legal aid, unless the intended legal action or defence appears to be evidently wanton or hopeless (pauper party). In particular, an action is to be regarded as wanton where a party not applying for legal aid, after reasonable examination of the circumstances of the case, and in particular of the prospects for recovering his claim, would refrain from bringing a suit, or would only assert part of his claim.

*) The subsequent paragraphs of Article 63 are irrelevant to the present considerations. They refer to the question of according aliens or stateless persons the same treatment as Austrians, which is in any case guaranteed by Article 9, paragraph 1, of the Convention, and to the granting of legal aid to juridic persons.

Federal Law of 22nd January, 1969, for the Implementation of the Convention of 20th June, 1956, on the Recovery Abroad of Maintenance

(see No. 918 of the Annexes to the Verbatim Report of the National Assembly, 11th Legislative Period)."

F. TOETREDING

Zie *Trb.* 1957, 121, *Trb.* 1962, 106 en *Trb.* 1969, 2¹).

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

Algerije ²⁾ 10 september 1969

1) De Regering van **Polen** heeft, in overeenstemming met artikel 17, eerste lid, van het Verdrag, op 5 februari 1969 aan de Secretaris-Generaal van de Verenigde Naties medegedeeld bezwaar te maken tegen het eerste van de twee voorbehouden door de Tunesische Regering gemaakt bij de toetreding tot het Verdrag (zie *Trb.* 1969, 2, blz. 8). Het Verdrag is mitsdien tussen Polen en Tunesië niet in werking getreden.

2) Onder het volgende voorbehoud:

„The Democratic and Popular Republic of Algeria does not consider itself bound by the provisions of article 16 of the Convention concerning the competence of the International Court of Justice and affirms that the agreement of all the parties concerned is required in each case before a dispute can be brought before the International Court of Justice.”. (V.N.-vertaling)

Algerije heeft in de zin van artikel 2 van het Verdrag het Ministerie van Justitie aangewezen als verzendende en ontvangende instelling.

De Regering van **Niger** heeft overeenkomstig artikel 2, lid 3, van het Verdrag op 22 maart 1969 aan de Secretaris-Generaal van de Verenigde Naties medegedeeld, dat voortaan het „Department of General Administrative and Consular Affairs of the Ministry of Foreign Affairs” als verzendende en ontvangende instelling zal optreden (vgl. *Trb.* 1969, 2, blz. 8).

G. INWERKINGTREDING

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

Het Verdrag is op 12 augustus 1969 voor de Nederlandse Antillen in werking getreden.

H. TOEPASSELIJVERKLARING

De Regering van het Koninkrijk der Nederlanden heeft op 12 augustus 1969 ter kennis van de Secretaris-Generaal van de Verenigde Naties gebracht, dat de bepalingen van het Verdrag overeenkomstig artikel 12 van toepassing zullen zijn op de Nederlandse Antillen, daarbij verklarende dat het door de Regering van het Koninkrijk der Nederlanden bij de nederlegging der akte van bekrachtiging gemaakte voorbehoud met betrekking tot artikel 1 eveneens voor de Nederlandse Antillen geldt.

Ter uitvoering van artikel 2, leden 1 en 2, van het Verdrag heeft de Regering van de Nederlandse Antillen als verzendende en ontvangende instelling aangewezen de Voogdijraad (Court of Guardianship) op Curaçao.

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

"The text of the provisions of the Civil Code of the Netherlands Antilles concerning maintenance"

Article 152

Husband and wife shall be faithful to each other, and help and assist each other.

Article 153

Husband and wife pledge to each other, by the simple fact of their marriage, to maintain and to educate their children.

Article 156

The husband is obliged to receive his wife in his home. He shall protect her and give her, according to his social status and financial means, whatever she needs.

Article 242

The wife is, notwithstanding separation of estates, obliged to contribute, proportionally to her means and to those of her husband, towards the cost of the household and the education of the children that she has borne by him. If the husband is without means, all costs must be borne by the wife alone.

Article 255b

When a court of first instance pronounces the dissolution of a marriage (after 5 years' separation from bed and board) or a change has taken place within the meaning of Article 255, third paragraph ¹), it may, if there are reasonable grounds to suspect that the parent not entrusted with the guardianship will not contribute adequately to the maintenance and education of the minor children, make an order as provided for in Article 279b in the manner and with the consequences as laid down in that Article.

Where no such order has been made, the court of guardianship may sue at law for maintenance when the judgment dissolving the marriage has been entered in the civil register.

Article 262

During the hearing of a petition for divorce, the wife is entitled to claim maintenance, which, the amount having been determined by the court, the husband shall pay to her.

If the wife, without the court's permission, leaves the residence allotted to her, she may, depending on the circumstances, be deprived of all claim to maintenance and, where she is the petitioner, further prosecution of her petition for divorce may even be disallowed.

Article 274

If the spouse on whose petition divorce has been granted does not have sufficient means to maintain himself, the court may order the other spouse to contribute from his estate towards the maintenance of the petitioner.

Article 295, first paragraph

The provisions contained in Articles 259 to 269 inclusive, in Articles 271 to 277 inclusive, and in Article 280, are also applicable when separation from bed and board is requested by one of the spouses.

¹) At the request of either or both of the parents, the court of first instance may, on the grounds of circumstances arising after the judgment dissolving the marriage became final, make an order in accordance with the preceding paragraph and amend the conditions, contained in the first paragraph, concerning the children, after having heard or having duly summoned the parents, the joint guardians and the relatives by blood or marriage of the minor children. This order can be declared immediately enforceable, notwithstanding any appeal that may be made, with or without security.

Article 286

Before applying for separation from bed and board (a joint application for separation from bed and board is meant in this Article) the husband and wife are required to regulate by authentic act all the conditions of the separation with regard to themselves personally, to the exercise of parental authority and to the responsibility for the maintenance and education of their children.

The arrangements which they make during the judicial procedure must be submitted for the approval of the court of first instance, and where necessary, be regulated by that court.

Article 338a

The father of a child born out of wedlock which has not been acknowledged by him is obliged to maintain the child and to contribute towards its maintenance and education for as long as it is under age.

The father shall be deemed to be the man who had sexual intercourse with the mother in the period between the 301st and the 179th day prior to the date of birth of the child.

Any action instituted to claim provision for maintenance and education shall be dismissed:

if the defendant can prove that the mother had sexual intercourse during the aforementioned period with another man or other men, unless it was impossible that the child could have been conceived as a result thereof, or in general,

if the court is convinced that the defendant is not the father of the child.

Article 338b

The claim mentioned in the foregoing article must be lodged with the court of first instance on the island where the child is domiciled. The claim is barred after the lapse of five years from the date of birth of the child.

The decision of the court, granting the claim, contains an order to pay an amount weekly, monthly or quarterly to the guardian of the child. The court of first instance stipulates as far as possible the guarantees for the payments. If due reasons exist, the court of first instance may, however, order that payment be effected in a lump sum.

Article 338e

As long as an illegitimate child is unable to maintain himself owing to a physical or mental handicap, the obligation to maintain the child continues after he has attained his majority.

Article 338f

Any person obliged to pay maintenance under the terms of Article 338a is also obliged to pay the mother the costs of her delivery and the costs of her maintenance for 6 weeks thereafter. The court shall estimate these costs reasonably and with due regard to local custom.

This obligation exists even though the child be stillborn. The claim must be lodged with the court of first instance at the place in which the mother is domiciled. The right to lodge the claim is barred after the passage of one year from the date of delivery.

Article 338g

Evidence as referred to in Articles 338a and 338f is not restricted to any particular method. Counter-evidence is permissible and likewise not restricted to any particular method. The decisive oath is not allowed. Article 1943 is not applicable. The hearing of witnesses and the pleading of the case shall take place in camera. The judgment shall be rendered in public.

In a case concerning maintenance as referred to in Article 338a, the mother may be heard as a witness even though she is the legal representative of her child.

Article 1943

It is forbidden to make partial use of a confession to the detriment of the person making the confession. The court is, however, free to make such use if the debtor has stated facts, tending to his discharge, which are proven to be false.

Article 338h

If the defendant acknowledges his obligation as referred to in Articles 338a and 338f, the court is empowered at any time during the hearing to stipulate that a certain payment be made for the duration of the hearing, this without prejudice to the plaintiff's right to demand in summary proceedings, on the grounds of urgency, a provisional allowance.

Article 347

A child, no matter how old, owes his parents respect and reverence.

The parents are obliged to maintain and educate their minor children. Loss of parental authority or guardianship does not imply that they are exempted from their obligation to contribute, proportionally to their income, towards the maintenance and education of their children.

With regard to children of full age, the provisions in the third chapter of this title are applicable.

Article 351

Without prejudice to what has been provided in respect of dissolution of marriage after separation from bed and board, divorce and separation from bed and board, parents who, for any reason other than their having been deprived or relieved thereof, do not have parental authority or guardianship over their minor child, shall pay weekly, monthly or quarterly to the court of guardianship an amount towards the maintenance and education of that child, the amount to be decided by the court of first instance on application by the court of guardianship.

Article 355

Illegitimate children who have been acknowledged are solely under guardianship.

Article 347 is applicable to them.

Article 251 is applicable to a person who has acknowledged a minor illegitimate child if for some reason other than having been relieved or deprived thereof, he does not have guardianship over that child.

Article 368g

A person who has been relieved or deprived of parental authority shall pay to the court of guardianship an amount towards the maintenance and education of the minor children over whom he has lost parental authority, the amount to be decided by the court of first instance on application by the court of guardianship. If the court of guardianship has petitioned that the parent be relieved or deprived of parental authority, or if, pending the investigation as referred to in Article 368c ter, the court of first instance has been requested to stipulate the amount to be paid, the amount of payment shall be stipulated in the court's decision whereby the parent is relieved or deprived of parental authority.

Article 370

Children are obliged to maintain their parents and other relatives in the ascending line if such persons should be without means.

Article 371

Sons-in-law and daughters-in-law shall likewise, and in the same cases, support their parents-in-law. This obligation ends however:

1. if the mother-in-law marries a second time;

2. if the spouse through whom the relationship by marriage came about and all the children born of the marriage are deceased.

Article 372

The obligations proceeding from the provisions contained in the two foregoing Articles are reciprocal.

Article 375

Should the person who is obliged to provide maintenance prove that he is unable to furnish the money required, the court of first instance may, after due investigation, order that the person entitled to maintenance be received and taken care of in the home of the person obliged to provide maintenance.

Article 376

Should the father or the mother of a child to whom they are obliged to provide maintenance offer to take the child into his or her home and to maintain it there, they shall then be exempted from fulfilling this obligation in any other manner.

Article 377

Illegitimate children and illegitimate children who have been acknowledged are obliged to maintain their parents. This is a reciprocal obligation.

Article 378

All agreements in virtue of which the right to maintenance is waived are null and void.

Article 378a

Maintenance that is due by virtue of the provisions of this Code, including the obligations to maintain and educate a minor, shall be determined in accordance with, on the one hand, the needs of the persons entitled to maintenance and, on the other hand, the income and wealth of the person obliged to pay maintenance, due regard being had to the number and relationship of the other persons whom, under this Code, he is obliged to maintain.

The method of rendering proof which is usually required by the court in the Netherlands Antilles

When the claimant has stated in his petition all the facts and circumstances which, in his opinion, in virtue of the applicable civil law, justify his claim, the rendering of proof, if the defendant denies the claim, is mainly effected through the hearing of witnesses and the production of relevant documents.

The court of the place of domicile of the defendant is normally the court competent to handle the claim. The court of the place of domicile of the claimant is frequently also considered competent. Where the claim concerns maintenance to be paid by the begetter of an illegitimate minor, the court of the place of domicile of the child is also competent to handle the claim."

(vertaling)

J. GEGEVENS

Zie *Trb.* 1957, 121, *Trb.* 1962, 106 en *Trb.* 1969, 2.

Voor het op 26 juni 1945 te San Francisco tot stand gekomen Handvest der Verenigde Naties zie ook, laatstelijk, *Trb.* 1969, 104.

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.* 1969, 95.

De Wet van 27 april 1912 tot regeling van het Armbestuur (Armenwet) is laatstelijk gewijzigd bij Wet van 13 juni 1963 (*Stb.* 284) houdende nieuwe regelen betreffende de verlening van bijstand door de overheid (Algemene Bijstandswet). Door de Algemene Bijstandswet zijn een aantal artikelen van de Armenwet vervallen, terwijl de gehandhaafde artikelen thans worden aangehaald als Rompwet Instellingen van weldadigheid (zie artikel 85 Algemene Bijstandswet). De Algemene Bijstandswet is bij Besluit van 10 juli 1964 (*Stb.* 312) in werking getreden op 1 januari 1965.

Bij Landsverordening van 18 december 1968 (*Publ.bl.* 212) zijn in de Nederlandse Antillen regelen vastgesteld ter uitvoering van het onderhavige Verdrag. Deze Landsverordening is, gelijktijdig met het Verdrag, op 12 augustus 1969 in werking getreden.

Uitgegeven de drieëntwintigste februari 1970.

De Minister van Buitenlandse Zaken a.i.,

DE JONG.