

No. 3850. CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE. DONE AT NEW YORK ON 20 JUNE 1956¹

COMMUNICATION under articles 2 (3) and 3 (2)

Received on:

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SURINAME

Subject: *Convention on the Recovery Abroad of Maintenance (New York, 20 June 1956)*

With reference to Memo LE 221/1 (20-1) of the Secretary-General of the United Nations dated May 5, 1981, on information concerning Articles 2 and 3 of the above-mentioned Convention, the following document discusses:

1. Judge having jurisdiction; appeal.
2. Methods of determining maintenance.
3. Procedure.
4. Taking of evidence.
5. Execution.
6. Costs.
7. Foreign judgments.
8. Applicable law.
9. Persons entitled to maintenance under Suriname law.
10. Agents designated for service and receipt of claims under Article 2 of the Convention.

1. *Authorized judge; appeal*

The district judge of the respondent's place of residence has jurisdiction. If the respondent does not reside in Suriname, the district judge of the petitioner's place of residence has jurisdiction.

There are two district courts for civil actions:

The First District includes Paramaribo and the districts of Saramacca, Suriname, Commewijne, and Brokopondo. The [Second] District covers the rest of Suriname. Both district courts are located in Paramaribo. The recipient institution can easily handle the filing procedure in the court that has jurisdiction. The district judge sits alone.

In all cases appeals may be filed with the Court of Justice, where judgment is rendered by three judges.

The appeal must be filed thirty days after service by the Clerk of the Court of the notice of judgment.

If the respondent does not appear, the application is approved if it is not found unlawful or without merit. However, the respondent can file objection within fourteen days after he learns of the decision, whereupon the case is again taken up by the district judge.

2. *Methods of determining maintenance*

The judge sets the amount of maintenance for weekly, two-weekly, monthly, or quarterly periods.

¹ United Nations, *Treaty Series*, vol. 268, p. 3; for subsequent actions, see references in Cumulative Indexes Nos. 3 to 5 and 7 to 14, as well as annex A in volumes 939, 960, 1056 and 1146.

If the father has not acknowledged his child, the judge may also order payment of a lump-sum amount (compensation). However, this is unusual. In determining the amount of the maintenance payment, the judge must take into consideration the needs of the party entitled to maintenance and the income and assets of the party obligated to make payment, in conjunction with the number of other dependents he may have.

The judge may change the amount at any time if major changes occur in the determining factors. He may also do the same with maintenance agreements. The maintenance obligation ends with death, except that if a child not recognized by its father is involved, the heirs can be obliged to pay the maintenance. However, it may not be higher than the amount the child would have inherited if it were acknowledged when the father, in his last will and testament, bequeathed his permissible share of his inheritance. No one may lawfully waive his right to maintenance.

3. *Procedure*

If the family relationship on the basis of which the maintenance must be paid still exists, the proceeding begins with a petition to the judge. The respondent receives a copy of the petition. The respondent must file an answer within three weeks (outside the country: five weeks) after service of said copy. If he fails to answer, the petition is granted unless it is found unlawful or without merit.

If he replies, the parties are called for an oral hearing. Thereafter the judge issues his ruling, in some cases after hearing witnesses.

Both parties may appear by authorized representatives, who may also file answers.

Parties other than attorneys, hence the courts receiving the petition, require written power of attorney, drawn up in accordance with the rules in effect in the country of origin. A sample thereof is annexed (see attachment).

If the family relationship is no longer in existence, and in the case of a child not acknowledged by the father, a petition is filed and a proceeding is held in accordance with the customary rules. Usually this is done in writing. Here too the recipient institution can appear for the party, with written authorization.

Lastly, in the case of a divorce proceeding the maintenance for the divorced spouse can be fixed at the same time, while the maintenance for the children can be determined immediately after the divorce as provided in the order. The same applies for separation from bed and board. While the action for divorce and the action for separation from bed and board are pending, at the petitioner's request the judge can establish a temporary support payment for the other spouse and the minor children. This often happens as regards foreign parties in the case of an appearance where the parties cannot be represented.

The judge can later be asked to modify the decision.

The guardianship board (the court seized) often appears on behalf of minor children. If it does not so appear, the guardian must do so. In most cases the mother is the guardian. Sometimes the decision can be declared enforceable by the guardianship board, with inclusion of a provision for execution even if an appeal or an objection is being filed.

4. *Taking of evidence*

In Suriname, evidence of family relationship is usually provided by extracts from the Civil Registers. Other official documents of other countries are accepted.

In most cases, in order to determine the amount of maintenance the judge will also require submission of a wage statement issued by the employer, a certificate of the size of the family and the number of family members residing in the household, proof for other persons being supported, and evidence regarding the origins and the amount of indebtedness claimed. Suriname law also provides the possibility of forcing the father of a non-acknowledged child to fulfil his support obligation toward the child (Art. 342 Suriname Civil Code).

In cases of judicial intervention (paternity action) the guardianship board appears as a party to the action.

It must be proven that during the period between the 307th and 179th days prior to the birth of the child the mother of the child had sexual relations with the alleged father. Evidence thereof consists of:

- a. Written evidence;
- b. Testimony by witnesses (mother and blood and other relatives of one of the parties may also appear as witnesses);
- c. Presumption;
- d. Acknowledgment.

If the father proves that during said period other men also had sexual relations with the mother he is not obliged to make maintenance payments.

5. *Execution*

Support orders of Suriname judges can be executed in simplified manner by service of the judgment followed by executory sale of assets. In addition to seizure, followed by sale of the debtor's assets for the amount of the arrears, third-party liens can be levied (upon the employer). From that time on the third party is obligated to pay, out of his wages and similar sums he obtains, not only the arrears but also the maintenance payments additionally owed. The lien is served by a marshal, who also handles the public sale if necessary.

In cases involving support of minor children, the guardianship board (the court seized) as a rule handles the execution free of charge.

6. *Costs*

Costs relate to the costs of the action and execution, attorneys' fees, and marshals' costs.

Anyone who submits proof that he is unable to pay the costs is allowed to bring the action free of charge (cf. paragraph 7).

Execution can involve high costs, but they can be recovered at the time of execution, at least if the judge has ordered that the respondent must pay the costs.

The judge often does so, but if married couples or previously married couples are involved, or if part of the demand is denied, he is empowered to rule that each of the parties must pay his own costs.

The guardianship board can usually appear free of charge in cases involving support payments for minor children.

A security payment can be required for the payment of costs when foreigners are involved, unless this is forbidden by treaty.

7. *Foreign judgments*

If provided under or pursuant to treaty or law, judgments rendered by foreign judges, arbitration rulings issued in foreign countries, and public instruments issued in foreign countries, can be executed in Suriname (New Art. 306 of the Suriname Code of Civil Procedure).

In this connection it should be recalled that Suriname is also a party to the Treaty concerning the recognition and execution of judgments on child-support obligations (The Hague, 15 April 1958).¹

Suriname also has an Agreement with the Kingdom of the Netherlands concerning reciprocal recognition and execution of judicial judgments and public instruments in civil matters (The Hague, 27 August 1976).²

Nationals of Parties to the Treaty have the right, once the exequatur has been obtained from the district judge, to have a court judgment for subsistence executed in Suriname, pursuant to

¹ United Nations, *Treaty Series*, vol. 539, p. 27.

² *Ibid.*, vol. 1135, No. I-17802.

Articles 312*b-h* of the Suriname Code of Civil Procedure. These nationals can also obtain the right, on the same footing as Suriname nationals, to bring an action free of charge, and no bond for payment of legal costs can be demanded of them. The petition for execution can be filed by the recipient court, together with a power of attorney along the lines of the attached sample (see attachment). It is necessary that this authority have a certified copy of the judgment that is the subject of the petition for execution, and documents indicating the enforceability in the country of origin.

Certification can be required except when a Treaty is in effect between Suriname and the country of origin eliminating the certification requirement. (Suriname is a party to the Treaty eliminating the certification requirement for foreign public documents [The Hague, 5 October 1961].)¹ Translation in the Netherlands of the document can be done by the recipient court.

The case is not reconsidered for the obtaining of exequatur. However, the question of whether the ruling by the judge having jurisdiction accords with the forms required in his country, and whether execution of the judgment does not conflict with Suriname public order, is considered. If there is no treaty between the country in which the judgment was rendered and Suriname governing recognition and execution, a new proceeding must be held in Suriname.

8. *Applicable law*

As a rule, Suriname law applies. It will always apply as regards procedure. As regards substantive law, foreigners will generally be governed by the national law of their country. If they hold dual citizenship, the principle of effective nationality is operative.

The law of the residence is applicable if the person has become so closely linked with the residence and the country in which the residence is located that his nationality now has little or no significance for him in relation thereto. Should the otherwise applicable law conflict with Suriname public order, it will not be applicable.

9. *Persons entitled to maintenance, and persons obliged to pay maintenance, under Suriname law*

The obligation to pay maintenance is always based on kinship or family relationship.

There exists a maintenance obligation in regard to three groups:

- a. Spouses and former spouses;
- b. Parents toward their minor children;
- c. Direct descendants and in-laws.

a. Articles 156 and 159 of the Suriname Civil Code unequivocally state that the obligation to provide help and support and the procuring of necessities can also lead to monetary support if the petitioning spouse no longer lives together with the other, when because of the behavior of the other spouse continued co-habitation cannot reasonably be required.

After divorce only the guilty spouse is subject to the obligation to pay maintenance.

The same is applicable to separation from bed and board.

Naturally there must be a need for subsistence (Articles 275 and 299 of the Suriname Civil Code).

b. Both parents are obligated to provide maintenance for their minor children and to educate them and contribute financially to their support (provided this does not lead to bankruptcy) so long as the children are minors (Article 351, paragraph 2, Articles 380 and 342 of the Suriname Civil Code).

The obligation ends if the child is adopted and when the child is able to take care of himself.

A child is a minor up to the age of 21, or until he marries if he marries before that age.

¹ United Nations, *Treaty Series*, vol. 527, p. 189.

Maintenance can automatically be required of mothers and fathers of legitimate and acknowledged children; parenthood must be proven in the case of children not acknowledged (cf. paragraph 4).

c. The obligation of direct descendants and in-laws toward their in-law children and vice-versa as regards maintenance applies only in cases of need, which is not very readily assumed by judges.

The obligation of in-laws ceases to exist when the spouse who caused the pregnancy and the children from that marriage die (Article 374 Surinaam Civil Code). The child who is acknowledged by his father when he is no longer a minor is not required to support said father in case of need (Art. 380 para. 2 Suriname Civil Code).

10. *Institutions designated as institutions of service and reception as specified in Article 2 of the Convention*

The guardianship board at No. 7 Grote Combeweg in Paramaribo is designated as the institution of reception and service as specified in Article 2 of the Convention.

The guardianship board officially deals with child protection and in that capacity it deals with most legal applications concerning maintenance for minors.

The board also ensures that maintenance payments made to it for minors are turned over to their legal representatives (in most cases the mother). The board now serves as well as the recipient organization for legal applications for execution of the Convention; also, as the agency for service of process it is required to ensure that demands for maintenance originating in Suriname are served upon the recipient organization of the other party to the Treaty.

Attachment

SAMPLE POWER OF ATTORNEY

The undersigned, , empowers (Secretary of the Guardianship Board in Paramaribo) to appear for him as his authorized representative in the legal action against and to execute all procedural steps therein on his behalf.

Date:

Signature:

I, , certify this signature.

Registered ex officio on 5 March 1982.
