

**Fourth Meeting of the Special Commission
on the Recognition and Enforcement of Foreign Judgments
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Title	Considerations regarding the Convention on the Recognition and Enforcement of Foreign Judgments	
Author	Panama	
Agenda item		
Mandate(s)		
Objective		
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
Annexes	N/A	
Related documents		

Article 2:

We are of the opinion that the particular exclusions that are made in article 2 severely limit the development of cooperation in the matter because of the diversity of aspects that they comprise.

In effect, the rule makes exclusions that can severely limit the extraterritorial effects of judicial decisions, which by their nature, merit effectiveness in the receiving State. Many of these matters are those that are most commonly immersed in situations of international legal traffic and require solutions that demand extraterritorial effectiveness.

This raises, for example, that when the nature of a procedural claim before a judicial authority of a member country of the agreement has a declarative character and is referred to the validity or registration of an intellectual property right (copyright or industrial property), it would be excluded from its application and therefore it is not subject to recognition and enforcement as a foreign judgment.

Article 3:

Regarding definitions, we believe that the concept of a sentence can be reduced to any decision that ends the process as *res judicata* or on which there is no appeal in the territory of the State where it was issued.

Article 4:

Recognition and Enforcement - General Provisions

Numeral 2: By establishing that "the substantive review will not proceed" of the judgment issued by the court of origin; we are of the criterion that as expressed, this prohibition limits the judge of recognition, since if the considerations to dictate the sentence violate or are contrary to the internal public order of the State of origin, this situation is duly alleged by the counterpart of the person requesting the recognition and execution of a sentence, the judge must be willing to deny the request.

On the other hand, we do not believe it is convenient to allow early execution, even by granting the faculty to the required JUDGE through the creation of bail; Considering that if the decision coming from the issuing State is not yet firm, it is not possible to authorize its recognition, in case of possible damages that may be caused and that the entire amount of the surety was not enough to repair them; therefore, we believe it is convenient to apply to final judgments.

Article 5:

The subject regulated in this standard is closely related to the scope of the agreement. Therefore, if the issue of intellectual property is excluded from the recognition and enforcement of the Treaty, we do not think it appropriate to request the exclusion of paragraph 3, since the general rule is to exclude intellectual property issues from the issue of recognition and enforcement.

Article 6:

It is the same assessment of 5, in what relates to the permissibility of the sentence on registration or validity of patents. Either we allow it or we exclude it. We suggest improving the congruence between the exclusions made in article 2 and articles 5 and 6.

Regarding Article 6 "Exclusive criteria for recognition and enforcement" in the field of intellectual property, the territorial nature of decisions is indicated when a judgment is about registrations or validity of a patent, trademark, etc., however, the wording regarding the recognition and execution when derived from registration matters, derives it from the International Agreements for the Protection of Intellectual Property (as established in article 26), which all contain the "National Treatment" rule, but which seems to be included within the lists of matters excluded from article 2, so by interpretation it would indicate that it does not refer to the registration matter, but to the rights derived from registration and in that interpretation if recognition and execution would be possible.

Article 7:

We believe that the reason for refusal of the exequatur should revolve around the lack of personal notification of the defendant and not be subject to the determination of the term "timely time" which may be a very broad criterion of appreciation for the Judge called to decide the recognition and execution of the sentence.

Likewise, in this same article 7 we believe it convenient to include the rule of another as a condition of recognition and execution:

"THAT THE COURT WHO SENTENCED THE JUDGMENT IS THE COMPETENT TO KNOW AND JUDGE THE CASE."

Denial of recognition or enforcement.

Finally, article 7, literal g, is in accordance with the norms of the International Conventions regarding the specialty of the matter and the territorial factor when it indicates that the judgment regarding an infringement of an intellectual property right must be denied its recognition and enforcement when applying a Law other than the Law that governs that right

Article 10:

We note that this article gives the Judge of recognition a power that allows you to know a substantive issue that should have been the matter of the judge who knew the case only and exclusively. In matters of recognition and enforcement, aspects that were the subject or had to be discussed before the foreign judge who delivered the judgment should not be examined.

Article 11:

The subject of intellectual property was excluded in article 2; however, in this norm, reference is made to it. Consequently, we consider that if the scope of the agreement was already limited and intellectual property was excluded, it does not make sense to continue talking about this same elimination.

Article 13:

In this article, even if it has a different name, it is once again entering into the subject of the feasibility requirements for recognition and execution that can be unified with the rest of the criteria. It would be necessary to clearly define which criteria would be referred to in literal "c". On the other hand, we consider that it is sufficient about the documentation that must be accompanied by the demand for exequatur, that it be said that an authenticated copy of the resolution and apostille system or traditional authentication system is attached.

Requesting additional requirements such as certifications issued on the jurisdictional scope in the State of origin of the sentence, will severely hamper the cooperation mechanism, far from facilitating it, which is and should be the purpose of any inter-state judicial cooperation system.