

THE HAGUE CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

I. INTRODUCTION

The The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("the Convention") has been adopted on 15 November 1965 and replaces among its member states Arts. 1 to 7 of both the The Hague Conventions on Civil Procedure of 17 July 1905 and 1 March 1954. Most European countries as well as some African, American and Asian states are members. The Convention counts more than 30 member states.

The purpose of this contribution is to give a general summary of the Convention's most important provisions and their practical implications. Albeit trying to keep a broad and international approach, the position taken by Switzerland will be pointed out in some instances, since the author of this paper is Swiss.

II. AIM AND GOALS OF THE CONVENTION

The aim of the Convention was to create a system that

- allows prompt service avoiding the time consuming diplomatic channels;
- secures effective service on the parties;
- facilitates the proof of service by introduction of certain form standards without further requirements of legalisation, and
- provides for possibilities of service by private persons.

The goals of the Convention show that the member states were looking for a compromise between (1) the legal traditions of common law jurisdiction and the civil law jurisdiction and (2) fictitious service and effective service¹. In order to avoid any conflict with long-standing legal

¹ Paul Volken, Die internationale Rechtshilfe in Zivilsachen, Zürich 1996, at 45.

traditions of fictitious service, the convention avoided a general and uniform definition of service².

III. GENERAL CONTENT AND APPLICABILITY

The Convention contains provisions on the service procedure and the different ways of service, the form for the request of service, the proof of service, the obligation of service and the respective sanctions, the language, the grounds for a refusal of a request and, finally, costs. Furthermore, there is a model form for the ordinary way of service annexed to the Convention which forms an important part of it.

According to its Art. 1(1), the Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

1. Geographical Application

The general clause of Art. 1 could give the wrong impression that the Convention's field of application is *erga omnes* (including non-member states). In fact, the Convention - like others in the field of civil procedure - does only apply to its member states. This means that it only applies if the documents to be served in a member state originate in another member state irrespective of - for example - the nationality of the parties involved in a proceeding³.

2. Judicial and Extrajudicial Documents

The documents falling under the Convention are all kinds of documents originating from a court proceeding (judicial documents) and issued by an administrative body acting in an official function (extrajudicial documents)⁴.

² Thomas Bischof, *Die Zustellung im internationalen Rechtsverkehr in Zivil- oder Handelssachen*, Zürich 1997, at 243 et seq.

³ Volken, at 46 et seq.

⁴ See Bischof, at 246 et seq.; Volken, at 52.

3. Civil or Commercial Matter

The Convention does not further elaborate on the meaning of a "civil or commercial matter" as one of the prerequisites for the applicability of the Convention. The term has been literally transcribed from precedent Conventions on this matter. The history of the Convention contains strong indications that the issue whether a document relates to a civil or commercial matter must be answered looking at the very nature of the substantive claim involved and not at the kind of procedure on a strictly formal basis⁵. Still, there remain a lot of unanswered questions. For example, it was contentious if the Convention was also applicable to documents from U.S. court proceedings in which claims for punitive damages were raised. Some German authorities had refused service of the writ of summons on public policy grounds since they considered punitive damages as a criminal matter. Those decisions have been reversed by higher German courts because at the time of serving a summons the relevant issue is not yet the enforcement of a judgement awarding punitive damages⁶.

To clear up the issue what a civil or commercial matter is, a special committee was formed in 1989. In its recommendation, the committee held that the terms should not be interpreted according to the law of the requested state, according to the law of the requesting state or a combination thereof. The term "civil or commercial matter" should, therefore, be interpreted autonomously⁷.

In the "grey" zone between civil and public law, an extensive interpretation should be adopted and lead to the inclusion of matters based on, e.g., bankruptcy law, guardianship and inheritance matters, as civil and commercial matters. Tax law related claims are considered as matters of public law. Furthermore, the recommendation states that member states are not impeded from entering into bilateral agreements to apply the Convention also in public law matters⁸.

⁵ Volken, at 53 et seq.

⁶ Volken, at 55/56.

⁷ Volken, at 54 et seq.

⁸ Volken, at 55.

IV. VARIOUS WAYS OF SERVICE AND THEIR MODALITIES

The Convention provides for an ordinary and six alternative ways of service. Four of the six alternative ways of service can be opposed to according to Art. 21(2)(a) of the Convention, i.e., the use of the methods of transmission pursuant to Arts. 8 and 10 of the Convention.

1. Ordinary Way of Service

The ordinary way of service according to the Convention is via a Central Authority that each state must designate⁹. According to Art. 18 of the Convention, a state may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. Federal states may designate several Central Authorities.

The Central Authority of the state addressed will undertake to receive requests for service coming from the authority or judicial officer competent under the law of the state in which the documents originate and shall itself serve the documents or shall arrange to have it served by an appropriate agency¹⁰.

a) Authority or Judicial Officer in the Requesting State

It is important to note in this context that the requesting state determines who is an "authority or judicial officer". Thus, the outgoing request for service does not necessarily have to be initiated by a governmental authority, such as the court where the action has been introduced, but can also be forwarded by an judicial officer competent under the law of the state in which the documents originate. For example, English solicitors and American lawyers representing a claimant party in the proceeding qualify as "judicial officers" in their countries. A private person who does not have the status of a "judicial officer" cannot forward the request by the ordinary way of service to the Central Authority¹¹.

⁹ Art. 2 of the Convention; the Central Authority or Authorities for each member state are listed in the appendix to the Convention.

¹⁰ Art. 3 of the Convention; for the service procedure in the requested state, see V. infra.

¹¹ Bischof, at 261; The "Manuel pratique sur le fonctionnement de la convention de La Haye du 15.11.1965 ..." (ISBN 90 6215 3399) contains detailed information who can be an "authority or judicial officer" in the requesting state.

b) The Central Authority in the Requested State

In Switzerland, for example, the designated Central Authority is a judicial body in every Canton, e.g. the Attorney General or the Court of Appeals, while the Federal Department of Justice will continue to forward requests to the competent Cantonal Central Authority. Germany and Canada, for example, have chosen a similar concept. Canada designated the Attorney General of each state and the Department of External Affairs and Germany appointed the courts or ministry of justice in each state. In the U.S., the Central Authority is the Department of Justice which will forward the requests to the competent U.S. Marshall for the service of process¹².

2. Alternative Ways of Service

Beside the ordinary way of service, there was still the need for the well established alternative ways of service¹³, an overview of which is given on the next page.

a) Direct Consular Channel

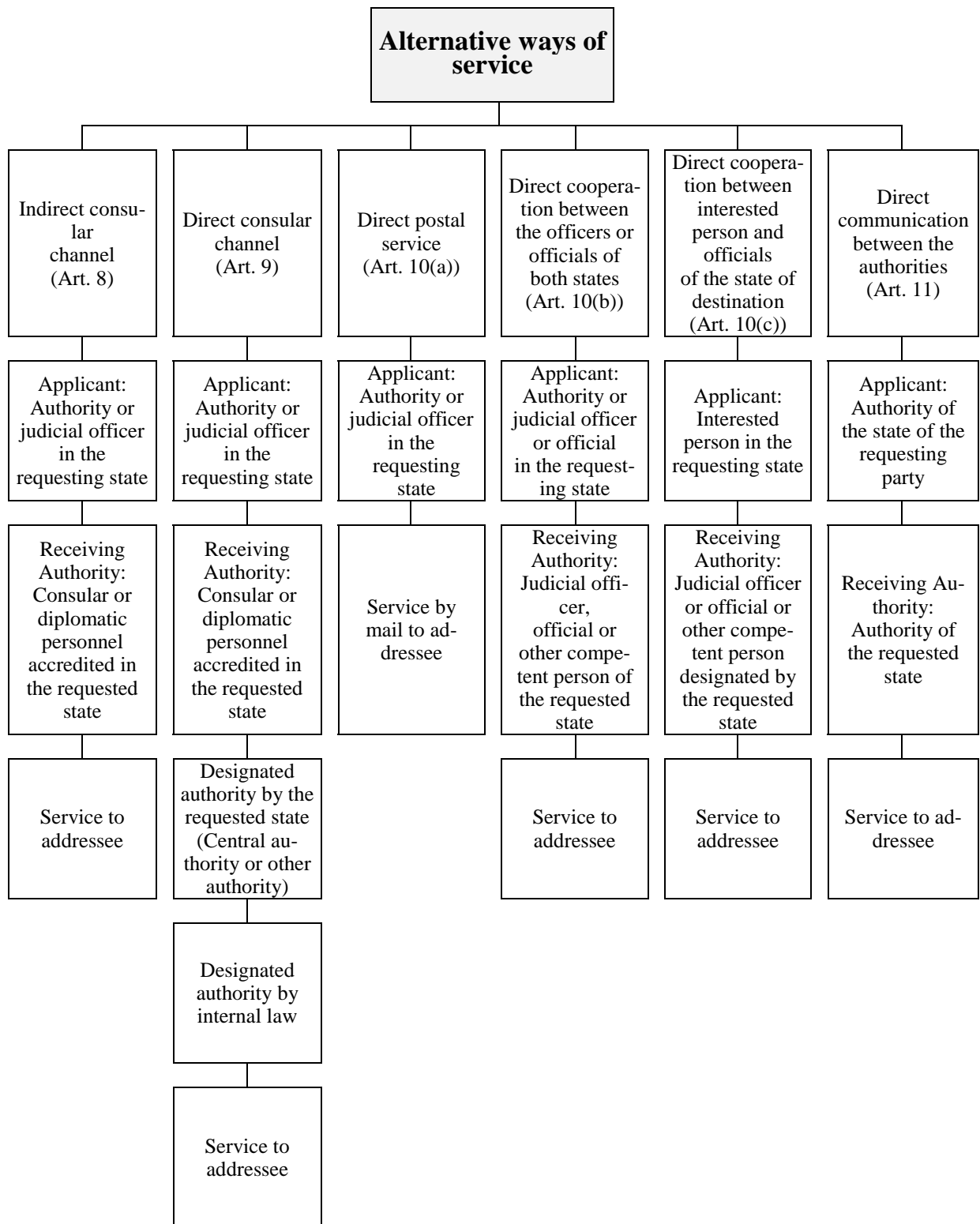
A state shall be free to effect direct service of documents upon persons abroad through its own diplomatic or consular agents according to Art. 8 of the Convention, provided no compulsion is applied. However, the state of destination can oppose to such service within its territory, unless the document is to be served upon a national of the state in which the documents originate¹⁴. Switzerland, Egypt, Germany, France, Japan, Luxembourg, Norway, Portugal, Seychelles, Slovakia and the Czech Republic have opposed to this direct service.

Switzerland has traditionally objected to all direct ways of service by foreign authorities or officials. The direct service of persons and every other undertaking of procedural acts on Swiss territory for a foreign proceeding are considered a violation of the Swiss sovereignty and can even be sanctioned as a criminal act according to Art. 271 of the Swiss Criminal Code if there was intent to violate Swiss territorial sovereignty.

¹² Bischof, at 260 et seq.; Volken, at 56 et seq.

¹³ Volken, p. 57, Adrian Lobsiger/Alexander R. Markus, Ueberblick zu den vier neuen Konventionen über die internationale Rechtshilfe, in: SJZ 92(1996) 177 at 184.

¹⁴ Bischof, at 271; Volken, at 58.



It must be noted in this context that even if a country allows this alternative way of service, the direct service by a consul in the foreign country must be permissible under the law of the requesting state. Otherwise, there might be an invalid service under the law of the state where the proceeding takes place¹⁵. For example, American consuls may not serve a party according to their domestic law¹⁶.

b) Indirect Consular Channel

The Convention provides in Article 9 for the possibility to use the consular or diplomatic channels established between the member states to forward documents¹⁷.

This means, for example, that a foreign consul sitting in Switzerland must forward a request originating from his country to the designated Central Authority in Switzerland, in Zurich, for example, to the Court of Appeals for the Canton of Zurich and in Geneva to the Office of the General Prosecutor being the designated Central Authorities¹⁸. It is also possible that the requested state designates its own diplomatic and/or consular representatives in the requesting state as "another authority"¹⁹.

c) Direct Postal Service

The third alternative way of service provided for in the Convention is the use of postal channels, provided that the state of destination does not object²⁰. Switzerland, Germany, Norway, the Czech Republic and Slovakia, for example, have objected to the direct postal service for the same reasons as mentioned above²¹. The only country Switzerland allows the direct postal service with is Austria under a bilateral treaty²².

For sending documents to the U.S., it is worth noting that U.S. courts distinguish between the summons initiating a proceeding and other judicial documents. Since Art. 10(a) of the Con-

¹⁵ Bischof, at 271.

¹⁶ id.

¹⁷ Bischof, at 265.

¹⁸ See Bundesamt für Polizeiwesen, *Die internationale Rechtshilfe in Zivilsachen, Wegleitung Bern 1984* (amended 1996), Annex D; Bischof, at 265; Volken, at 58.

¹⁹ See Art. 18 of the Convention.

²⁰ For the special combination of postal service by the consul in the country of destination, see Jörg Kending, *Die "konsularische Zustellung durch die Post"*, in *RIW 9* (1996), at 722 et seq.

²¹ See 2.a supra; Art. 10(a) of the Convention; Bischof, at 269; Volken, at 58.

²² Volken, at 56 et seq.

vention uses the terminology "freedom to send judicial documents" (emphasis added), but does not mention "service", some U.S. courts have held that this provision is not applicable to summons initiating a proceeding, but only to other judicial documents to be sent after the proceeding is on its way²³.

In Switzerland, direct postal service to a party can be considered a criminal act if the sending party is willfully violating Swiss sovereignty. The normal way of procedure is then that the Swiss Department of Foreign Affairs will duly inform the authorities of the originating state that such service is not permissive under Swiss law, provided the addressee complains with the Swiss Department of Foreign Affairs²⁴.

d) Direct Cooperation Between the Judicial Officers, Officials or Competent Persons of Both States

Article 10(b) of the Convention provides that judicial officers and officials or any other competent person in the state where the proceeding takes place can effect service of judicial documents directly through judicial officers, officials etc. of the state of destination²⁵.

It depends upon the law of the state of destination which persons are permitted to finally effect service. In England, the solicitor is such a designated official who is permitted to effect service under English law. The English government, for example, has stated during the 1989 Conference that it prefers service to be effected through solicitors than through the Central Authority, although originally it had made a reservation to Arts. 10(b) and (c) of the Convention²⁶.

In practice, this means that a process server appointed by a U.S. court can transmit the documents to be served in England directly to an English solicitor. On both sides, there must be officials authorized under their respective laws to undertake such acts²⁷.

This cooperative system also works between France, Belgium, Luxembourg and the Netherlands through the so-called "huissiers" (kind of a process servers)²⁸. Egypt, Botswana, Ger-

²³ Bischof, at 270.

²⁴ See *Wegleitung*, at 12 et seq.

²⁵ See 2.a supra; Art. 10(b) of the Convention; Bischof, at 266.

²⁶ Bischof, at 267/268.

²⁷ Bischof, at 266.

many, Denmark, Finland, Israel, Japan, Norway, Seychelles, Sweden, Slovakia, the Czech Republic, Turkey and Switzerland have made a reservation against this provision and Art. 10(c) of the Convention²⁹.

e) Direct Cooperation Between an Interested Person and Officials of the State of Destination

Finally, Article Art. 10(c) of the Convention provides that any other person interested in a judicial proceeding in the originating state can effect service of judicial documents directly through judicial officers, officials etc. of the state of destination.

Besides courts, judges, clerks, marshalls and sheriffs, this also includes the attorney of the party on the requesting side in the originating state or the party itself³⁰. For example, if the Cantonal rules of civil procedure (in Switzerland all Cantons have their own rules of civil procedure) would allow an attorney to effect service (which is not the case; normally the courts or the administrative bodies administer the service procedure), he could address directly an U.S. attorney who will serve the documents on the addressee. The Swiss party would, however, not be allowed to contact the Marshall directly for the service of process³¹. It depends upon the law of the state of destination which persons are permitted to finally effect service³². Therefore it can be concluded that - depending on the jurisdiction - service between the attorney of the party of the originating state and the attorney of the party in the state of destination can be sufficient under Art. 10(c) of the Convention.

f) Direct Communication Between the Authorities

According to Art. 11 of the Convention, two or more contracting states can agree to permit direct communication between their respective authorities through bilateral or multilateral treaties³³. Switzerland permits this direct communication with all neighboring states (with the exception of Liechtenstein) as well as Belgium, Luxembourg, Poland, Slovakia, the Czech Republic and Hungary.

²⁸ Bischof, at 266.

²⁹ Volken, at 60.

³⁰ Wegleitung, at 6; Volken, at 59 et seq.

³¹ Bischof, at 268.

³² Bischof, at 267 et seq.

³³ Bischof, at 265; Volken at 60.

For example, the courts in Switzerland can directly communicate with the designated courts or ministries in Germany, Austria, Italy and France etc.

V. THE SERVICE PROCEDURE

The service procedure consists of two parts that have to be distinguished: The request for service and the actual service of the documents.

1. The Request for Service

The request for service originates from the authority or judicial officer competent under the law of the state in which the documents originate. The request has to conform with the English or French model form annexed to the Convention. It must be emphasized in this context that the use of the model form is only mandatory for the ordinary way of service and not for the subsidiary ways (direct consular channel and direct postal service)³⁴. For that reason, the 14th Session of the Hague Conference has issued a recommendation on additional information accompanying documents to be served abroad that should warn and briefly inform the served party, especially when the service is not effected through the channels of the Central Authorities³⁵.

The model form is divided in three parts³⁶:

- The first part of the request contains the actual request for service with the identity and the address of the applicant and the address of the receiving authority³⁷. Additionally, the applicant has to choose from the various ways of service and must fill out the list of documents to be served.

- The second part contains the attestation/certificate, wherein the requested authority certifies when, where, by which way of service, by whom and to whom the documents

³⁴ Bischof, at 277.

³⁵ Bischof, at 276 et seq.; Volken at 60.

³⁶ See Art. 7 of the Convention and the standard form annexed to the Convention.

³⁷ See Art. 5 of the Convention.

have been served or, in case of failure of service, the reasons why they could not be served.

- The third part of the request that will be delivered to the served party, shall inform him about the requesting authority, the parties and the nature and purpose of the foreign proceeding.

2. The Documents to Be Served

The documents to be served or a copy thereof shall be annexed to the request. There is no need for originals. The request and the documents shall be furnished in duplicate³⁸.

3. Methods of Service in the State of Destination

The procedural law of the requesting state provides which documents must be served, when and where such service is to be made or when time periods to respond start to run. On the other hand, the procedural law of the requested state provides whether, when, by whom and how foreign judicial documents are served with legal effect within its territory³⁹.

Pursuant to Art. 5 of the Convention, service is made according to the law of the requested state, by a particular method requested by the applicant (unless such a method is incompatible with the law of the requested state) or by delivery to an addressee who accepts it voluntarily. Those methods of service apply not only for the ordinary way of service, but also to the alternative ways of service according to Arts. 10(a) and (b) of the Convention according to the logic and systematics of the Convention.

4. Formal and Material Defects

The Convention does not generally provide for the legal consequences of defective requests for services.

³⁸ Art. 3 of the Convention.

³⁹ Volken, at 61 et seq.

a) Formal Defects

If, for example, the request for ordinary service is not in conformity with the model form, the Central Authority has the obligation to promptly inform the applicant and specify its objections to the request⁴⁰. Generally, a rejection is not appropriate because of formal defects since the court where the action is pending must later decide on the effects of such defective service and whether such defects can be cured⁴¹.

b) Substantive Defects

It is important to note that there is no room for an extensive substantive examination of the documents' contents by the Central Authority or any other body involved in the service procedure. The request and documents can only be examined summarily⁴². The only substantive question to be examined is the prerequisite of a civil or commercial matter. Traditionally, common law countries are very generous in the interpretation of this term. Therefore, everything that is not a criminal matter is, as a general rule, considered to be a civil or commercial matter. Problems and objections should be resolved according to Art. 4 of the Convention.

According to the Convention's text, a refusal of the request is only possible if the compliance with the request would infringe upon a state's sovereignty or security, but not on public policy grounds⁴³.

For example, it is no valid reason to refuse to comply with a request if a state under its internal law claims exclusive jurisdiction over the subject-matter or the internal law does not permit such actions upon which the application is based⁴⁴.

5. Notification After the Successful Service

After a defendant party has been successfully served with the document, the Central Authority of the requested state or any authority which it may have designated for that purpose shall

⁴⁰ Art. 4 of the Convention; Bischof, 279 et seq.; Volken, 63.

⁴¹ See V. infra and Bischof, at 280.

⁴² Bischof, at 281.

⁴³ Art. 13 of the Convention; Bischof, at 282; Volken, at 63.

⁴⁴ Volken, at 64.

complete the certificate in the form of the model annexed to the Convention⁴⁵. The certificate shall state that the document has been served and shall include the method, the place and the date of service at the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service⁴⁶. The certificate shall then be forwarded directly to the applicant⁴⁷. The use of postal service is permissible⁴⁸.

V. SANCTIONS

Arts. 15 and 16 of the Convention provide for sanctions in the cases of non-compliance with the Convention's provisions and violation of due process. Art. 15 of the Convention aims at hindering the continuation of the ongoing court or administrative procedure, while Art. 16 of the Convention is a service of process guarantee.

1. Art. 15 of the Convention

The scope of Art. 15 of the Convention is limited to summons and other documents initializing a civil procedure or equivalent papers. This provision is only applicable if the defendant has not entered an appearance. It prevents a defendant from the entry of default consequences.

According to this provision, judgement shall not be given until it is established that the document was either effectively served by a method prescribed by the internal law of the requested state or actually delivered to the defendant *in personam* or to his residence by another method provided for by the Convention. The *numerus clausus* of methods of service provided for by the Convention must be observed under Art. 15 of the Convention⁴⁹. Additionally, service must have been effected in sufficient time for a defense. Usually, the necessary proof of service is rendered by the attestation of service forming the second part of the model form⁵⁰. If service is not effected by one of the ways provided by the Convention, such defect may only be cured by the defendant's appearance according to the law of the requesting state⁵¹.

⁴⁵ Art. 6(1) of the Convention.

⁴⁶ Art. 6(2) of the Convention.

⁴⁷ Art. 6(4) of the Convention.

⁴⁸ Bischof, at 288.

⁴⁹ Bischof, at 295.

⁵⁰ Art. 6 of the Convention.

⁵¹ Bischof, at 302 et seq.

Formal defects of service as, for example, service on an unauthorized recipient will generally be judged by the law of the requested state⁵². Only if service was effected in a particular form requested by the applicant⁵³, formal defects are judged by the laws of the requesting state⁵⁴.

On the request of France, the second paragraph of Art. 15 of the Convention was introduced according to which a state can declare that a judgement may be given without a certificate of service or delivery if three conditions are met:

- the documents haven been transmitted by one of the methods provided for in the Convention,
- a period of six months has elapsed since the date of transmission,
- no certificate has been received even though every reasonable effort has been made to obtain it from the requested state.

Many states, including Germany, Japan and the U.S. have made a declaration according to the second paragraph of Art. 15 of the Convention. The consequence is that the law of the requesting state will decide on the matter of proper service⁵⁵.

2. Art. 16 of the Convention

This article contains provisions for the case that a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service under this Convention and a judgement has been entered against a defendant who has not appeared. According to Art. 16 of the Convention, the judge shall relieve the defendant from the effects of the expiration of time for appeal from the judgement if two conditions are met:

- the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend himself or of the judgement in sufficient time to appeal, and
- the defendant has disclosed a *prima facie* defense to the action on the merits.

⁵² Art. 5(1)(a) of the Convention generally refers to the procedural law of the requested state.

⁵³ Art. 5(1)(b) of the Convention.

⁵⁴ Bischof, at 304 et seq.

A defendant can avail himself of this provision even if service was made in conformity with the Convention, as long as he can prove that he could not get knowledge of the document without any fault on his part and that, therefore, he could not defend himself⁵⁶.

This sanction does not apply if the address of the person to be served was not known⁵⁷. Furthermore, the application must be filed within reasonable time after the defendant had knowledge of the judgement. Member states can provide for an expiration period for the application that cannot be shorter than one year⁵⁸. In the U.S., for example, a void judgement made under the Federal Rules of Civil Procedure can always be challenged.

VI. TAXES AND COSTS

The Convention distinguishes the ordinary and the specific taxes or costs for the service of judicial documents. Ordinary cost are not to be paid or reimbursed. If during the service procedure specific costs incur occasioned by the employment of a judicial officer etc. or the use of a particular method of service, the applicant must bear them⁵⁹.

VII. ISSUES OF TIME

Although there are no general rules on how long the service may take, there is some empirical data available for the ordinary way of service. In Central Europe, it will take approximately 1 to 3 months from the transmission of the request for service to the actual service of the documents. In African, Asian, South or Central American countries, the service procedure may take at least 6 months.

⁵⁵ Bischof, at 299.

⁵⁶ Bischof, at 309.

⁵⁷ Art. 1 par. 2 of the Convention.

⁵⁸ Art. 16 par. 3 of the Convention.

⁵⁹ Art. 12 of the Convention.

VIII. COURT DECISIONS

Finally, two court decisions relating to the Convention's field of application are summarized that can illustrate the problems involved with proper service.

1. **Dadota v. Hosogai**⁶⁰

A Japanese citizen was involved in a car accident in Arizona by which his co-driver, also a Japanese citizen, was killed. Back in Japan, the wife of the victim sued the driver for damages in a court in Arizona. After several attempts to serve him with a summons, she decided to hire a Japanese lawyer to hand over the summons. The Japanese lawyer confirmed this act by an affidavit. The defendant claimed that the service was void based on the Convention. Claimant based her argument on the fact that the civil procedure of Arizona allowed for personal service. The appellate Court of Arizona did not follow this approach. Based on Art. 5 of the Convention, it held that the Convention prevailed over the internal rules of civil procedure. The court noted that the Convention also provided for personal service. Because Japan had made a reservation to Art. 10(c) of the Convention, personal service was, however, not permitted.

2. **Schlunk v. Volkswagenwerk Aktiengesellschaft**⁶¹

The parents of claimant Schlunk had been killed during a car accident in the U.S. driving a Volkswagen. Schlunk sued Volkswagen AG (Germany) on the grounds of product liability etc., but served its subsidiary Volkswagen of America Inc. with the summons. Volkswagen argued that such service was not permissible based on the Convention. The U.S. Supreme Court held that the substituted service of the writ of summons to Volkswagen America was valid. It confirmed the ruling in *Dadota v. Hosogai* in its principle by stating that the Convention generally prevails over internal rules of civil procedure. However, it held that the Convention was not applicable in this case because internal law provided for substituted service. The Supreme Court noted that the Convention did not prescribe service abroad if there was a possibility of service within the jurisdiction. Finally, the Supreme Court explained that the Convention's provisions to protect the defendant in Art. 15 were only applicable to the case of the "remise au parquet" (according to the remise au parquet system in the Latin countries, the

⁶⁰ Kadota v. Hosogai, 608 P.2d68 (Ariz.App. 1980); the author did not have an original version of this decision which is reported by Lobsiger/Markus, at 189.

documents for service abroad were only handed over to the general prosecutor, who was only sending a note to the addressee that proper service was effected internally⁶²). The extended jurisdiction over the foreign company by serving its fully controlled subsidiary was based on the doctrine of piercing the corporate veil. The Supreme Court assumed that based on the controlling position of the parent company, its American subsidiary was an actual representative for the purpose of service of process.

This interpretation is very problematic as it does not consider one of the main goals of the Convention - to secure effective service on the parties. If the Convention, contrary to what is stated in Art. 1(1), does not apply in all cases of service abroad, there will always be the uncertainty of fictitious and substituted service that puts due process at jeopardy⁶³.

IX. CONCLUSION AND RECOMMENDATION

The Convention has established various very efficient ways of service of process if the defendant party is domiciled in a foreign state. The claimant's lawyer is well advised not to look only at his internal rules of service of process in such case, but also at the Convention, to make sure that a possible default judgement can be enforced against the defendant domiciled in a foreign member state. Even though it might take some time to figure out which ways of service are valid and fast in the defendant's state, it is worthwhile. The general view that service of process may take three to six months, in particular if the defendant is from a state, such as Switzerland, which has opposed to Art. 10 of the Convention, is correct. However, a client's interest is likely better served if the lengthy procedure through the ordinary way of service is followed and he, therefore, has an enforceable judgement in hand. On the other hand, there are countries between which service can be very fast, for example, between the U.S. and England⁶⁴, if the claimant's attorney in the U.S. figures out that he can serve process through an English solicitor.

In case of uncertainty, it is recommended to consult also a lawyer in the country of the domicile of the defendant to make sure whether a particular way and method of service is available

⁶¹ See Lobsiger/Markus, at 190; the author did not have the original version of this decision, i.e., 108 S.Ct. 2104.

⁶² Bischof, at 206.

⁶³ Lobsiger, at 191.

⁶⁴ See supra IV. 2.d.

and/or permissible. There is nothing worse for a claimant's attorney and his client than to have a judgement in hand which cannot be enforced at the domicile of the defendant.