

SUPPLEMENTARY CONVENTION
AMENDING THE CONVENTION BETWEEN THE REPUBLIC
Of AUSTRIA AND THE REPUBLIC OF THE PHILIPPINES
IN THE FIELD OF SOCIAL SECURITY

The Republic of Austria

and

the Republic of the Philippines

being desirous of amending and supplementing the Convention in the field of Social Security of 1 December 1980 - hereinafter referred to as the „Convention“ - have agreed as follows:

Article I

1. Sub-paragraph (1)(5) of Article 1 of the Convention shall read as follows:

„5. „competent authority“ means
in relation to Austria the Federal Minister responsible for the administration of
the legislation of Austria,
in relation to the Philippines the Heads of the Institutions responsible for the
administration of the legislation of the Philippines;“

*2. At the end of sub-paragraph (1)(1)(b) of Article 2 of the Convention the semicolon
shall be replaced by a comma and the following sub-paragraph (c) shall be inserted:*

„(c) with regard to Section II only, sickness insurance;“

3. Paragraph (2) of Article 2 of the Convention shall read as follows:

„(2) This Convention shall also apply to any legislation, which consolidates amends
or supplements the legislation specified in paragraph (1) of this Article.“

4. Article 3 of the Convention shall read as follows:

„This Convention shall apply to:

a) persons who are or have been subject to the legislation of one or both of the
Contracting Parties;

b) other persons with respect to the rights they derive from the persons described in
subparagraph (a).“

5. To Article 4 of the Convention the following paragraph (3) shall be added:

„(3) As regards Austrian legislation concerning the crediting of periods of war
service and periods considered as equivalent, Philippine nationals who were Austrian
nationals immediately before 13 March 1938 shall receive equal treatment with Austrian
nationals.“

6. Article 6 of the Convention shall read as follows:

„Subject to the provisions of Articles 7 and 7a, an employed or self-employed person who works in the territory of one Contracting Party shall, in respect of that work, be subject only to the legislation of that Contracting Party. In the case of an employed person, this shall also apply if the employer's place of business is in the territory of the other Contracting Party.“

7. Article 7 of the Convention shall read as follows:

„(1) An employed person who is subject to the legislation of one Contracting Party and who is sent to perform services in the territory of the other Contracting Party for the same employer shall, in respect of those services, remain subject only to the legislation of the former Party for the first sixty calendar months as though those services were performed in its territory.

(2) When a national of one Contracting Party is sent to perform services in the territory of the other Contracting Party for an air transport organization of the first Contracting Party, paragraph (1) shall be applied without reference to the sixty month time limit.

(3) A person employed by the government or other public employer of a Contracting Party in the territory of the other Party shall, in respect of that employment, be subject to the legislation of the latter Contracting Party only if he is a national thereof or if he ordinarily resides in its territory. In the latter case he may, however, within three months of the beginning of the employment, elect to be subject only to the legislation of the former Contracting Party if he is a national thereof.“

8. After Article 7 of the Convention the following Article 7a shall be inserted:

„Article 7a

(1) At the request of an employed person and his employer or of a self-employed person, the competent authorities of the two Contracting Parties may provide, by agreement with one another, exceptions in the application of Articles 6 to 7, taking into account the nature and circumstances of the work.

(2) Where, in accordance with paragraph (1) of this Article, a person is subject to Austrian legislation, that legislation shall apply to him as if he were employed in the territory of Austria.“

9. Article 10 of the Convention shall read as follows:

„When a person who has completed insurance periods under the legislation of both Contracting Parties, or the survivor of such a person, claims a benefit, the competent Austrian institution shall determine, in accordance with Austrian legislation, whether the claimant is entitled to a benefit by adding together the insurance periods, as provided in Article 9 and taking into account the following provisions:

- (a) Where Austrian legislation make the award of certain benefits conditional upon the completion of insurance periods in an occupation covered by special schemes or in a specified occupation or employment, only insurance periods completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, under Philippine legislation shall be taken into account for the award of such benefits.
- (b) Where Austrian legislation provides that the period of payment of a pension shall prolong the reference period in which the insurance periods must be completed, periods during which a pension has been awarded under Philippine legislation shall prolong the aforesaid reference period.“

10. Article 11 of the Convention shall read as follows:

„(1) Where under Austrian legislation entitlement to a benefit exists without the application of Article 9, the competent Austrian institution shall determine the amount of the benefit in accordance with Austrian legislation on the basis of insurance periods to be taken into account exclusively under that legislation.

(2) Where under Austrian legislation entitlement to a benefit exists only with the application of Article 9, the competent Austrian institution shall determine the amount of the benefit in accordance with Austrian legislation on the basis of insurance periods to be taken into account exclusively under that legislation and taking into account the following provisions:

- (a) Benefits or parts of benefits the amount of which does not depend on the duration of insurance periods completed shall be calculated in proportion to the ratio of the duration of the insurance periods to be taken into account for the calculation under Austrian legislation to 30 years, but not exceeding the full amount.
- (b) Where periods after the contingency arises are to be considered for the calculation of invalidity or survivors benefits, these periods shall be taken into account only in proportion to the ratio of the duration of the insurance periods to be taken into account for the calculation of the benefit under Austrian legislation to two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 and the date on which the contingency occurred, but not exceeding the full period.

(c) Subparagraph (a) shall not apply

- (i) to benefits resulting from supplementary insurance,
- (ii) to means-tested benefits or parts of such benefits designed to ensure a minimum income.

(3) Where the insurance periods to be taken into account under Austrian legislation for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under Austrian legislation exclusively on the basis of these insurance periods, no benefit under these legislation shall be paid.“

11. Article 12 of the Convention shall read as follows:

„(1) If a person is not entitled to the payment of a benefit solely on the basis of the insurance periods under Philippine legislation, but is entitled to the payment of the benefit through the application of Article 9, the competent Philippine institution shall calculate the amount of benefit payable to that person in the following manner:

- (a) it shall first determine the amount of the theoretical benefit which would be payable under Philippine legislation solely on the basis of the minimum insurance periods required under that legislation;
- (b) it shall then multiply the theoretical benefit by the ratio that the insurance periods actually completed under Philippine legislation represent in relation to the minimum insurance periods required under that legislation.

(2) Where the insurance periods to be taken into account under Philippine legislation for the calculation of the benefit are in aggregate less than twelve months and no entitlement to a benefit has been established under Philippine legislation exclusively on the basis of these insurance periods, no benefit under that legislation shall be paid.“

12. Articles 13 and 14 of the Convention shall be deleted.

13. The second sentence of paragraph (1) of Article 15 of the Convention shall be deleted.

Article II

(1) This Supplementary Convention shall be ratified. The instruments of ratification shall be exchanged at Vienna as soon as possible.

(2) This Supplementary Convention shall enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

(3) Paragraph (1) of Article 11 of the Convention as amended by this Supplementary Convention shall be effective retroactively as of 1 January 1994.

(4) Paragraph (2) of Article 11 of the Convention as amended by this Supplementary Convention shall be effective retroactively as of 1 January 1997.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Supplementary Convention.

DONE at Manila on ¹⁵ September 2000, in duplicate in the German and English languages, both texts being equally authentic.

For the Republic of Austria:

For the Republic of the Philippines:

Wolfgang JILLY m.p.

Carlos A. ARELLANO m.p.

Federico C. PASCUAL m.p.

