

CHAPTER FOUR

OTHER PROVISIONS OF THE CONVENTION

Introduction. The Convention contains three further substantive Articles, between them forming two "Chapters" of the Convention, dealing with three other aspects of civil procedure, the first being about copies of entries and decisions and the second about physical detention and the third about safe-conduct.

Copies of entries and decisions. Article 18 concerns copies of or extracts from entries in public registers (e.g. birth, marriage and death certificates, or entries in registers relating to companies or business names) and decisions relating to civil or commercial matters (e.g. court orders). Each country has its own procedures and scale of fees for obtaining such documents, and nothing in Article 18 requires any change in those rules. What Article 18 does, however, is to outlaw discrimination, by requiring that nationals of and persons habitually resident in any Contracting State may obtain such documents on the same terms and conditions as local citizens; and that such persons may have the documents legalised, if necessary. The Convention does not speak on the question of the charges to be levied.

Physical detention. Article 19 deals with imprisonment for debt or in other contexts of a civil and commercial nature; it does not cover any criminal cases at all. Such civil imprisonment is becoming increasingly rare in practice, and it is difficult to envisage any Commonwealth jurisdiction in which the rules would discriminate on grounds of nationality or habitual residence. Such discrimination has been found in some other countries, notably Surinam and formerly the Netherlands. It is outlawed by Article 19.

Safe-conduct. The provisions on this matter, which appear in Article 20, proved extremely controversial at The Hague and were strongly opposed by delegates from common law countries. A reservation can be made under Article 28, second paragraph, item d, excluding the application of Article 20, and it is thought that Commonwealth countries would wish to, and indeed some would be constitutionally required to, exercise that right of reservation.

The principle of Article 20 is that a witness in proceedings in a Contracting State, who is required either by the court or by a party to the proceedings acting with the leave of the court (even if this leave is formal, e.g. the issue of a witness summons through the court office) to attend in person, should be granted immunity from arrest and prosecution in respect of criminal offences committed

before his arrival for the purposes of giving evidence. This would apply to all crimes, from minor motoring offences to terrorism and high treason.

The Article contains detailed provisions as to the length of time for which the safe-conduct remains valid, but the principle appears objectionable. It is probably unnecessary, given the existence of other procedures (including The Hague Convention on the Taking of Evidence, Letters of Request, etc.) for taking evidence abroad. It could raise constitutional points, especially in countries whose constitutional documents give independence to a Director of Public Prosecutions or similar official. It would certainly be politically controversial. For all these reasons, a Reservation on the point will commend itself.