



JIM SMITH
Attorney General
State of Florida

DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL

TALLAHASSEE, FLORIDA 32301

September 13, 1982

*CFO
Pangloss
cc 8/23/82*

The Honorable David H. Pingree
Secretary
Department of Health and Rehabilitative
Services
1317 Winewood Boulevard
Tallahassee, Florida 32301

Re: Declaration of Reciprocity with the Federal
Republic of (West) Germany. §88.0405, F.S.

Dear Secretary Pingree:

This is in response to your request that this office declare the Federal Republic of (West) Germany to be a reciprocating state for purposes of Ch. 88, F.S., the Revised Uniform Reciprocal Enforcement of Support Act (1968).

Section 88.0405(1), F.S., provides that the Attorney General may declare a foreign nation or state of a foreign nation to be a reciprocating state for purposes of Ch. 88, F.S., if the Attorney General finds that reciprocal provisions are available in the foreign nation or state of a foreign nation for the enforcement of support orders issued in the State of Florida. See also, §88.031(18), F.S., defining "state" for purposes of Ch. 88 to include "any foreign nation or state of a foreign nation declared pursuant to §88.0405 to have similar reciprocal provisions." You have supplied this office with copies of the pertinent provisions of German law relating to the establishment and enforcement of support, together with English translations thereof. Based upon my examination of the provisions of German law supplied to this office, I am of the opinion that procedures for the enforcement of support orders issued in this state are available under German law and therefore under the provisions of §88.0405, the Federal Republic of (West) Germany may be declared to be a reciprocating state.

While West Germany does not appear to have a reciprocal support enforcement law as such, German substantive law and procedure

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CHILD SUPPORT
ENFORCEMENT SECTION

recognize the right of children to support and of non national or non resident children to proceed in the German courts. See, §1601 of the German Civil Code (BGB) which states that relations, lineally descended, are obligated to support one another. See also, §1602 stating that only those persons who are unable to maintain themselves are entitled to support. And see, §1610 regarding the amount of support. Section 328 of the Code of Civil Procedure (ZPO) sets forth the conditions by which a foreign judgment will be recognized by the German courts. Such a foreign judgment will not be recognized if, according to German law, the court of the foreign state failed to have jurisdiction or if the defendant is a German and did not submit to trial or was not served personally with the initial summons or the order either in the state where the proceeding court was located or with the assistance of the German legal authorities. A foreign decision will also be excluded from recognition if the decision conflicts with the provisions of German law enumerated in §328(1) (iii). A foreign decision will be recognized only if it is not contrary to "good mores" and the purposes of German law, §328(1) (iv), and if reciprocity is guaranteed, §328(1)(v). But see, §328(2) stating that the requirement of reciprocity in §328(1)(v) shall not prevent recognition of a foreign judgment in certain cases. German law provides that a judgment of a foreign court shall not be enforced by execution except by virtue of a judgment for enforcement. See, §722(1) of the Code of Civil Procedure (ZPO); subsection (2) of the section provides that jurisdiction to pronounce such a judgment shall be exercised by the Local or Regional Court having general jurisdiction over the debtor or before which an action may be brought against him under Article 23. The judgment for enforcement will be pronounced without re-examination as to the substance of the decision; it will not be pronounced, however, until the judicial decision of the foreign court has become final and conclusive under the laws applicable to that court or if recognition of the judgment is excluded under §328. Section 723 of the Code of Civil Procedure (ZPO). Although there appears to be no formal designation under German law of a governmental agency or officer to handle cases from foreign states, this office has been informed that a semi-private agency, the German Institute for Guardianship (Deutsches Institut Fur Vormundschaftswesen), located in Heidelberg, Germany, has agreed to handle cases from the United States and the filing of cases from Germany.

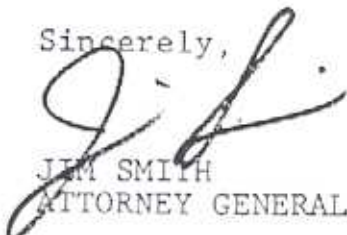
Therefore, while the Federal Republic of (West) Germany does not appear to have a reciprocal support enforcement law as such, I

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am of the opinion that procedures are available under German procedural and substantive law for the enforcement of support orders issued in the State of Florida and accordingly, the Federal Republic of (West) Germany pursuant to §88.0405, F.S., may be declared to be a reciprocating state.

With all good wishes, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Smith", is written over the typed name and title.

JIM SMITH
ATTORNEY GENERAL

JS/JWw



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DECLARATION OF RECIPROCITY

Pursuant to §88.0405, F.S., and for the reasons set forth in the attached opinion, I hereby declare the Federal Republic of (West) Germany to be a reciprocating state for the purposes of Ch. 88, F.S., the Revised Uniform Reciprocal Enforcement of Support Act (1968), commencing September 13, 1982.


JIM SMITH
ATTORNEY GENERAL