



Additional Protocol to the European Convention on State Immunity

Basle, 16.V.1972

The member States of the Council of Europe, signatory to the present Protocol,

Having taken note of the European Convention on State Immunity – hereinafter referred to as "the Convention" – and in particular Articles 21 and 34 thereof;

Desiring to develop the work of harmonisation in the field covered by the Convention by the addition of provisions concerning a European procedure for the settlement of disputes,

Have agreed as follows:

Part I

Article 1

- 1 Where a judgment has been given against a State Party to the Convention and that State does not give effect thereto, the party which seeks to invoke the judgment shall be entitled to have determined the question whether effect should be given to the judgment in conformity with Article 20 or Article 25 of the Convention, by instituting proceedings before either:
 - a the competent court of that State in application of Article 21 of the Convention; or
 - b the European Tribunal constituted in conformity with the provisions of Part III of the present Protocol, provided that that State is a Party to the present Protocol and has not made the declaration referred to in Part IV thereof.

The choice between these two possibilities shall be final.

- 2 If the State intends to institute proceedings before its court in accordance with the provisions of paragraph 1 or Article 21 of the Convention, it must give notice of its intention to do so to the party in whose favour the judgment has been given; the State may thereafter institute such proceedings only if the party has not, within three months of receiving notice, instituted proceedings before the European Tribunal. Once this period has elapsed, the party in whose favour the judgment has been given may no longer institute proceedings before the European Tribunal.
- 3 Save in so far as may be necessary for the application of Articles 20 and 25 of the Convention, the European Tribunal may not review the merits of the judgment.

Part II

Article 2

- 1 Any dispute which might arise between two or more States parties to the present Protocol concerning the interpretation or application of the Convention shall be submitted, on the application of one of the parties to the dispute or by special agreement, to the European Tribunal constituted in conformity with the provisions of Part III of the present Protocol. The States parties to the present Protocol undertake not to submit such a dispute to a different mode of settlement.
- 2 If the dispute concerns a question arising in proceedings instituted before a court of one State Party to the Convention against another State Party to the Convention, or a question arising in proceedings instituted before a court of a State Party to the Convention in accordance with Article 21 of the Convention, it may not be referred to the European Tribunal until the court has given a final decision in such proceedings.
- 3 Proceedings may not be instituted before the European Tribunal which relate to a dispute concerning a judgment which it has already determined or is required to determine by virtue of Part I of this Protocol.

Article 3

Nothing in the present Protocol shall be interpreted as preventing the European Tribunal from determining any dispute which might arise between two or more States parties to the Convention concerning the interpretation or application thereof and which might be submitted to it by special agreement, even if these States, or any of them, are not parties to the present Protocol.

Part III

Article 4

- 1 There shall be established a European Tribunal in matters of State Immunity to determine cases brought before it in conformity with the provisions of Parts I and II of the present Protocol.
- 2 The European Tribunal shall consist of the members of the European Court of Human Rights and, in respect of each non-member State of the Council of Europe which has acceded to the present Protocol, a person possessing the qualifications required of members of that Court designated, with the agreement of the Committee of Ministers of the Council of Europe, by the government of that State for a period of nine years.
- 3 The President of the European Tribunal shall be the President of the European Court of Human Rights.

Article 5

- 1 Where proceedings are instituted before the European Tribunal in accordance with the provisions of Part I of the present Protocol, the European Tribunal shall consist of a Chamber composed of seven members. There shall sit as *ex officio* members of the Chamber the member of the European Tribunal who is a national of the State against which the judgment has been given and the member of the European Tribunal who is a national of the State of the forum, or, should there be no such member in one or the other case, a person designated by the government of the State concerned to sit in the capacity of a member of the Chamber. The names of the other five members shall be chosen by lot by the President of the European Tribunal in the presence of the Registrar.

- 2 Where proceedings are instituted before the European Tribunal in accordance with the provisions of Part II of the present Protocol, the Chamber shall be constituted in the manner provided for in the preceding paragraph. However, there shall sit as *ex officio* members of the Chamber the members of the European Tribunal who are nationals of the States parties to the dispute or, should there be no such member, a person designated by the government of the State concerned to sit in the capacity of a member of the Chamber.
- 3 Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or of the present Protocol, the Chamber may, at any time, relinquish jurisdiction in favour of the European Tribunal meeting in plenary session. The relinquishment of jurisdiction shall be obligatory where the resolution of such question might have a result inconsistent with a judgment previously delivered by a Chamber or by the European Tribunal meeting in plenary session. The relinquishment of jurisdiction shall be final. Reasons need not be given for the decision to relinquish jurisdiction.

Article 6

- 1 The European Tribunal shall decide any disputes as to whether the Tribunal has jurisdiction.
- 2 The hearings of the European Tribunal shall be public unless the Tribunal in exceptional circumstances decides otherwise.
- 3 The judgments of the European Tribunal, taken by a majority of the members present, are to be delivered in public session. Reasons shall be given for the judgment of the European Tribunal. If the judgment does not represent in whole or in part the unanimous opinion of the European Tribunal, any member shall be entitled to deliver a separate opinion.
- 4 The judgments of the European Tribunal shall be final and binding upon the parties.

Article 7

- 1 The European Tribunal shall draw up its own rules and fix its own procedure.
- 2 The Registry of the European Tribunal shall be provided by the Registrar of the European Court of Human Rights.

Article 8

- 1 The operating costs of the European Tribunal shall be borne by the Council of Europe. States non-members of the Council of Europe having acceded to the present Protocol shall contribute thereto in a manner to be decided by the Committee of Ministers after agreement with these States.
- 2 The members of the European Tribunal shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

Part IV

Article 9

- 1 Any State may, by notification addressed to the Secretary General of the Council of Europe at the moment of its signature of the present Protocol, or of the deposit of its instrument of ratification, acceptance or accession thereto, declare that it will only be bound by Parts II to V of the present Protocol.

- 2 Such a notification may be withdrawn at any time.

Part V

Article 10

- 1 The present Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 The present Protocol shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or acceptance.
- 4 A member State of the Council of Europe may not ratify or accept the present Protocol without having ratified or accepted the Convention.

Article 11

- 1 A State which has acceded to the Convention may accede to the present Protocol after the Protocol has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 12

No reservation is permitted to the present Protocol.

Article 13

- 1 Any Contracting State may, in so far as it is concerned, denounce the present Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. The Protocol shall, however, continue to apply to proceedings introduced in conformity with the provisions of the protocol before the date on which such denunciation takes effect.
- 3 Denunciation of the Convention shall automatically entail denunciation of the present Protocol.

Article 14

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a any signature of the present Protocol;
- b any deposit of an instrument of ratification, acceptance or accession;

- c any date of entry into force of the present Protocol in accordance with Articles 10 and 11 thereof;
- d any notification received in pursuance of the provisions of Part IV and any withdrawal of any such notification;
- e any notification received in pursuance of the provisions of Article 13 and the date on which such denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Protocol.

Done at Basle, this 16th day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.