



ΠΑΡΑΡΤΗΜΑ ΠΡΩΤΟΝ

ΤΗΣ ΕΠΙΣΗΜΟΥ ΕΦΗΜΕΡΙΔΟΣ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

ὕπ' Ἀρ. 1257 τῆς 20ῆς ΦΕΒΡΟΥΑΡΙΟΥ 1976

ΝΟΜΟΘΕΣΙΑ

Ὁ περὶ τῆς Εὐρωπαϊκῆς Συμβάσεως περὶ Κρατικοῦ Προνομίου Ἑτεροδικίας καὶ Πρόσθετον Πρωτόκολλον (Κυρωτικός) Νόμος τοῦ 1976 ἐκδίδεται διὰ δημοσιεύσεως εἰς τὴν ἐπίσημον ἑφημερίδα τῆς Κυπριακῆς Δημοκρατίας συμφώνως τῷ Ἀρθρῷ 52 τοῦ Συντάγματος.

Ἀριθμὸς 6 τοῦ 1976

ΝΟΜΟΣ ΚΥΡΩΝ ΤΗΝ ΕΥΡΩΠΑΪΚΗΝ ΣΥΜΒΑΣΙΝ ΠΕΡΙ ΚΡΑΤΙΚΟΥ ΠΡΟΝΟΜΙΟΥ ΕΤΕΡΟΔΙΚΙΑΣ ΚΑΙ ΠΡΟΣΘΕΤΟΝ ΠΡΩΤΟΚΟΛΛΟΝ

Ἡ Βουλὴ τῶν Ἀντιπροσώπων ψηφίζει ὡς ἀκολούθως :

1. Ὁ παρῶν Νόμος θὰ ἀναφέρηται ὡς ὁ περὶ Εὐρωπαϊκῆς Συμβάσεως περὶ Κρατικοῦ Προνομίου Ἑτεροδικίας καὶ Πρόσθετον Πρωτόκολλον (Κυρωτικός) Νόμος τοῦ 1976. Συνοπτικὸς τίτλος.

2. Ἐν τῷ παρόντι Νόμῳ, ἐκτὸς ἐὰν ἐκ τοῦ κειμένου προκύπτῃ διάφορος ἔννοια— Ἑρμηνεία.

«Σύμβασις» σημαίνει τὴν Εὐρωπαϊκὴν Σύμβασιν περὶ Κρατικοῦ Προνομίου Ἑτεροδικίας καὶ Πρόσθετον Πρωτόκολλον τὴν γενομένην ἐν Βασιλείᾳ τῇ 16.5.1972, τῆς ὁποίας τὸ κείμενον ἐν τῷ Ἀγγλικῷ πρωτοτύπῳ ἐκτίθεται εἰς τὸ Μέρος I καὶ ἐν μεταφράσει εἰς τὴν Ἑλληνικὴν εἰς τὸ Μέρος II τοῦ Πίνακος :

Πίναξ.

Νοεῖται ὅτι ἐν περιπτώσει ἀντιθέσεως μεταξύ τῶν δύο κειμένων, ὑπερισχέει τὸ εἰς τὸ Μέρος I τοῦ Πίνακος ἐκτιθέμενον κείμενον.

3. Ἡ Σύμβασις, τὴν ὁποίαν ἡ Κυπριακὴ Δημοκρατία ὑπέγραψε τὴν 15ην Δεκεμβρίου 1975, δυνάμει τῆς ὑπ' ἄρ. 14.159 καὶ ἡμερομηνίαν 7ην Αὐγούστου 1975 Ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου, διὰ τοῦ παρόντος Νόμου κυροῦται. Κύρωσις Συμβάσεως.

ΠΙΝΑΞ
("Αρθρον 2)
ΜΕΡΟΣ Ι
EUROPEAN CONVENTION
ON STATE IMMUNITY
AND
ADDITIONAL PROTOCOL

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members;

Taking into account the fact that there is in international law a tendency to restrict the cases in which a State may claim immunity before foreign courts;

Desiring to establish in their mutual relations common rules relating to the scope of the immunity of one State from the jurisdiction of the courts of another State, and designed to ensure compliance with judgments given against another State;

Considering that the adoption of such rules will tend to advance the work of harmonisation undertaken by the member States of the Council of Europe in the legal field,

Have agreed as follows:

CHAPTER I

Immunity from jurisdiction

ARTICLE 1

1. A Contracting State which institutes or intervenes in proceedings before a court of another Contracting State submits, for the purpose of those proceedings, to the jurisdiction of the courts of that State.

2. Such a Contracting State cannot claim immunity from the jurisdiction of the courts of the other Contracting State in respect of any counterclaim:

- (a) arising out of the legal relationship or the facts on which the principal claim is based;
- (b) if, according to the provisions of this Convention, it would not have been entitled to invoke immunity in respect of that counterclaim had separate proceedings been brought against it in those courts.

3. A Contracting State which makes a counterclaim in proceedings before a court of another Contracting State submits to the jurisdiction of the courts of that State with respect not only to the counterclaim but also to the principal claim.

ARTICLE 2

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has undertaken to submit to the jurisdiction of that court either:

- (a) by international agreement;
- (b) by an express term contained in a contract in writing; or
- (c) by an express consent given after a dispute between the parties has arisen.

ARTICLE 3

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if, before claiming immunity, it takes any step in the proceedings relating to the merits. However, if the State satisfies the

court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it has taken such a step, it can claim immunity based on these facts if it does so at the earliest possible moment.

2. A Contracting State is not deemed to have waived immunity if it appears before a court of another Contracting State in order to assert immunity.

ARTICLE 4

1. Subject to the provisions of Article 5, a Contracting State cannot claim immunity from the jurisdiction of the courts of another Contracting State if the proceedings relate to an obligation of the State, which, by virtue of a contract, falls to be discharged in the territory of the State of the forum.

2. Paragraph 1 shall not apply :

- (a) in the case of a contract concluded between States ;
- (b) if the parties to the contract have otherwise agreed in writing ;
- (c) if the State is party to a contract concluded on its territory and the obligation of the State is governed by its administrative law.

ARTICLE 5

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a contract of employment between the State and an individual where the work has to be performed on the territory of the State of the forum.

2. Paragraph 1 shall not apply where :

- (a) the individual is a national of the employing State at the time when the proceedings are brought ;
- (b) at the time when the contract was entered into the individual was neither a national of the State of the forum nor habitually resident in that State ; or
- (c) the parties to the contract have otherwise agreed in writing, unless, in accordance with the law of the State of the forum, the courts of that State have exclusive jurisdiction by reason of the subject-matter.

3. Where the work is done for an office, agency or other establishment referred to in Article 7, paragraphs 2(a) and (b) of the present Article apply only if, at the time the contract was entered into, the individual had his habitual residence in the Contracting State which employs him.

ARTICLE 6

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it participates with one or more private persons in a company, association or other legal entity having its seat, registered office or principal place of business on the territory of the State of the forum, and the proceedings concern the relationship, in matters arising out of that participation, between the State on the one hand and the entity or any other participant on the other hand.

2. Paragraph 1 shall not apply if it is otherwise agreed in writing.

ARTICLE 7

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has on the territory of the State of the forum an office, agency or other establishment through which it engages, in the same manner as a private person, in an industrial, commercial or financial activity, and the proceedings relate to that activity of the office, agency or establishment.

2. Paragraph 1 shall not apply if all the parties to the dispute are States, or if the parties have otherwise agreed in writing.

ARTICLE 8

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate :

- (a) to a patent, industrial design, trade-mark, service mark or other similar right which, in the State of the forum, has been applied for, registered or deposited or is otherwise protected, and in respect of which the State is the applicant or owner ;
- (b) to an alleged infringement by it, in the territory of the State of the forum, of such a right belonging to a third person and protected in that State ;
- (c) to an alleged infringement by it, in the territory of the State of the forum, of copyright belonging to a third person and protected in that State ;
- (d) to the right to use a trade name in the State of the forum.

ARTICLE 9

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to :

- (a) its rights or interests in, or its use or possession of, immovable property ; or
- (b) its obligations arising out of its rights or interests in, or use or possession of, immovable property and the property is situated in the territory of the State of the forum.

ARTICLE 10

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a right in movable or immovable property arising by way of succession, gift or bona vacantia.

ARTICLE 11

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred.

ARTICLE 12

1. Where a Contracting State has agreed in writing to submit to arbitration a dispute which has arisen or may arise out of a civil or commercial matter, that State may not claim immunity from the jurisdiction of a court of another Contracting State on the territory or according to the law of which the arbitration has taken or will take place in respect of any proceedings relating to :

- (a) the validity or interpretation of the arbitration agreement ;
- (b) the arbitration procedure ;
- (c) the setting aside of the award, unless the arbitration agreement otherwise provides.

2. Paragraph 1 shall not apply to an arbitration agreement between States.

ARTICLE 13

Paragraph 1 of Article 1 shall not apply where a Contracting State asserts, in proceedings pending before a court of another Contracting State to which it is not a party, that it has a right or interest in property which is the subject-matter of the proceedings, and the circumstances are such that it would have been entitled to immunity if the proceedings had been brought against it.

ARTICLE 14

Nothing in this Convention shall be interpreted as preventing a court of a Contracting State from administering or supervising or arranging for the administration of property, such as trust property or the estate of a bankrupt, solely on account of the fact that another Contracting State has a right or interest in the property.

ARTICLE 15

A Contracting State shall be entitled to immunity from the jurisdiction of the courts of another Contracting State if the proceedings do not fall within Articles 1 to 14; the court shall decline to entertain such proceedings even if the State does not appear.

CHAPTER II

Procedural rules

ARTICLE 16

1. In proceedings against a Contracting State in a court of another Contracting State, the following rules shall apply.

2. The competent authorities of the State of the forum shall transmit.
 - the original or a copy of the document by which the proceedings are instituted;
 - a copy of any judgment given by default against a State which was defendant in the proceedings,

through the diplomatic channel to the Ministry of Foreign Affairs of the defendant State, for onward transmission, where appropriate, to the competent authority. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the defendant State.

3. Service of the documents referred to in paragraph 2 is deemed to have been effected by their receipt by the Ministry of Foreign Affairs.

4. The time-limits within which the State must enter an appearance or appeal against any judgment given by default shall begin to run two months after the date on which the document by which the proceedings were instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.

5. If it rests with the court to prescribe the time-limits for entering an appearance or for appealing against a judgment given by default, the court shall allow the State not less than two months after the date on which the document by which the proceedings are instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.

6. A Contracting State which appears in the proceedings is deemed to have waived any objection to the method of service.

7. If the Contracting State has not appeared, judgment by default may be given against it only if it is established that the document by which the proceedings were instituted has been transmitted in conformity with paragraph 2, and that the time-limits for entering an appearance provided for in paragraphs 4 and 5 have been observed.

ARTICLE 17

No security, bond or deposit, however described, which could not have been required in the State of the forum of a national of that State or a person domiciled or resident there, shall be required of a Contracting State to guarantee the payment of judicial costs or expenses. A State which is a claimant in the courts of another Contracting State shall pay any judicial costs or expenses for which it may become liable.

ARTICLE 18

A Contracting State party to proceedings before a court of another Contracting State may not be subjected to any measure of coercion, or any penalty, by reason of its failure or refusal to disclose any documents or other evidence. However the court may draw any conclusion it thinks fit from such failure or refusal.