

Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid

Moscow, 4.X.2001

Agreement
Explanatory Report
Français

The member States of the Council of Europe and the other Parties to the [European Agreement on the Transmission of Applications for Legal Aid](#), opened for signature in Strasbourg on 27 January 1977 (hereinafter referred to as "the Agreement"), signatories to this Protocol,

Noting the development and the implementation of the Agreement as an effective legal framework for the transmission of applications for legal aid at the pan-European level;

Considering that it is desirable to remove existing obstacles to civil proceedings abroad and to permit persons in an economically weak position more easily to exercise their rights abroad;

Desirous to improve the efficiency of the operation of the Agreement and to supplement it in certain aspects, in particular as regards questions relating to mutual assistance between central authorities and to the communications between lawyers and applicants for legal aid;

Bearing in mind Resolution (76) 5 on legal aid in civil, commercial and administrative matters;

Having regard to Recommendation No. R (99) 6 on the improvement of the practical application of the European Agreement on the Transmission of Applications for Legal Aid;

Taking into account Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and underlining the need for applicants for legal aid to be able to communicate with their lawyers not only in courts, but also before commencing judicial proceedings;

Have agreed as follows:

Article 1 – Purpose and definition

1. The purpose of this Protocol is to amend and supplement in certain aspects, as between the Parties to the Protocol, the provisions of the Agreement.

2. For the purpose of the Agreement and of this Protocol, "requested Party" means any Party who receives an application for legal aid from another Party in accordance with the provisions of the Agreement and this Protocol.

Article 2 – Co-operation between Parties

1. The Parties undertake promptly to afford each other the widest measure of mutual assistance in respect of applications for legal aid in civil, commercial or administrative matters which fall within the jurisdiction of the competent authorities of the requested Party.

2. Subject to the provisions of the Agreement, the requested Party shall not reject applications made under the Agreement without considering their merit, but shall process them in the most effective way possible in accordance with domestic procedures, which may include the seeking of further information.

Article 3 – Communication between lawyers and applicants

1. The requested Party shall:

a. ensure that lawyers appointed to represent such applicants communicate with these applicants in a language readily understood by them, or

b. ensure that costs for translation and/or interpretation of the communications between lawyers and applicants are covered.

2. Where it is not practicable to apply paragraph 1 above, the requested Party shall provide appropriate means to ensure the effective communication between lawyers and applicants.

3. The form used to transmit applications for legal aid under the Agreement and this Protocol shall indicate the languages readily understood by applicants.

Article 4 – Efficiency of the procedure

Each Party shall deal with applications within a reasonable time and shall require receiving central authorities to:

a. acknowledge receipt of the application;

b. inform transmitting authority of the decision taken on the application;

c. take all necessary steps to ensure that, whenever possible, a first instance decision is made in respect of all applications within six months, provided all information needed has been supplied;

d. report to transmitting central authorities six months after the date of receiving a complete application, if a decision has not been made, giving details on the progress of the application and any difficulties which are preventing a decision.

Article 5 – Expression of consent to be bound

1. This Protocol shall be open for signature by the States which have signed the Agreement, which may express their consent to be bound by either :

a. signature without reservation as to ratification, acceptance or approval; or

b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. A State may not sign this Protocol without reservation as to ratification, acceptance or approval, or deposit an instrument of ratification, acceptance or approval, unless it has already deposited or simultaneously deposits an instrument of ratification, acceptance or approval of the Agreement.

3. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 6 – Entry into force

1. This Protocol shall come into force on the first day of the month following the expiration of a period of three months after the date on which two member States of the Council of Europe have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 5.

2. In respect of any State which subsequently expresses its consent to be bound by it, the Protocol shall come into force on the first day of the month following the expiration of a period of three months after the date of its signature without reservation as to ratification, acceptance or approval or deposit of its instrument of ratification, acceptance or approval.

Article 7 – Accession

1. After the entry into force of this Protocol, any State which has acceded to the Agreement may also accede to the Protocol.

2. Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession which shall take effect on the first day of the month following the expiration of a period of three months after the date of its deposit.

Article 8 – Reservations

No reservation may be made in respect of any provision of this Protocol.

Article 9 – Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession specify the territory or territories to which this Protocol shall apply.

2. In respect of such territory, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General of the Council of Europe.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 10 – Denunciation

1. Any Contracting Party may, in so far as it is concerned, denounce this 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 of the notification by the Secretary General.

3. Denunciation of the Agreement shall automatically entail denunciation of this Protocol.

Article 11 – Notifications

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

- a. any signature without reservation in respect of ratification, acceptance or approval;
- b. any signature with reservation in respect of ratification, acceptance or approval;
- c. the deposit of any instrument of ratification, acceptance, approval or accession;
- d. any date of entry into force of this Protocol in accordance with Articles 5, 6 and 7;
- e. any declaration received in pursuance of the provisions of Article 9;

f. any notification received in pursuance of the provisions of Article 10 and the date on which denunciation takes effect;

g. any other act, declaration, notification or communication relating to this Protocol.

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

Done at Moscow, this 4th day of October 2001, in English and in French, both texts being equally authoritative, in a single copy which shall be 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.