

Economic Community of West African States, African Regional Bodies

Protocol A/P.I/7/91 on the Community Court of Justice

Legislation as at 6 July 1991

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Economic Community of West African States

Protocol A/P.I/7/91 on the Community Court of Justice

Published

Commencement date unknown

[This is the version of this document as it was at 6 July 1991 to 15 January 2005.]

THE HIGH CONTRACTING PARTIES

MINDFUL of Article 5 of the Treaty of the Economic Community of West African States, establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of the provisions of Article 4 paragraph (e) and Article 11 of the Treaty relating respectively to the Institutions of the Community and the establishment of a Community Court of Justice;

AWARE that the essential role of the Community Court of Justice is to ensure the observance of law and justice in the interpretation and application of the Treaty and the Protocols and Conventions annexed thereto, and to be seized with responsibility for settling such disputes as may be referred to it in accordance with the provisions of Article 56 of the Treaty and disputes between States and the Institutions of the Community;

DESIROUS of concluding a Protocol defining the composition, competence, statutes and other matters relating to the Community Court of Justice.

HEREBY AGREE AS FOLLOWS

Article 1 – Definition

In this Protocol, the following expressions shall have the meanings assigned to them hereunder;

"**Treaty**" means the Treaty of the Economic Community of West African States and includes Protocols and Conventions annexed thereto;

"**Community**" means the Economic Community of West African States established by Article 1 of the Treaty;

"**Member State**" or "Member States" means a Member State or Member States of the Community;

"**Authority**" means Authority of Heads of State and Government of the Community established by Article 5 of the Treaty;

"**Chairman of the Authority**" means the current Chairman of the Authority of Heads of State and Government of the Economic Community of West African States;

"**Council**" means the Council of Ministers of the Community established by Article 6 of the Treaty;

"**Executive Secretariat**" means the Executive Secretariat established in accordance with Article 8(1) of the Treaty;

"**Executive Secretary**" means the Executive Secretary of the Community appointed under Article 8(2) of the Treaty;

"**Court**" means the Community Court of Justice established by Article 11 of the Treaty;

"**Member of the Court**" or "Members of the Court" means a person or persons appointed as judge or judges in accordance with the provisions of Article 3.2 of the Protocol.

Article 2 – Establishment of the Court

1. The Community Court of Justice established under Article 11 of the Treaty as the principal legal organ of the Community shall be constituted and execute its functions in accordance with the provisions of this Protocol.

Article 3 – Composition

1. The Court shall be composed of independent judges selected and appointed by the Authority from nationals of the Member States who are persons of high moral character, and possess the qualification required in their respective countries for appointment to the highest judicial officers, or are jurisconsults of recognised competence in international law.
2. The Court shall consist of seven (7) members, no two of whom may be nationals of the same State. The members of the Court shall elect a President and Vice President from among their number who shall serve in that capacity for a term of three (3) years.
3. A person who for the purposes of membership of the Court could be regarded as a national of more than one Member State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.
4. The Members of the Court shall be appointed by the Authority and selected from a list of persons nominated by Member States. No Member State shall nominate more than two persons.
5. The Executive Secretary shall prepare a list in alphabetical order of all the persons thus nominated which he shall forward to the Council.
6. The Authority shall appoint the Members of the Court from a shortlist of fourteen persons proposed by the Council.
7. No person below the age of 40 years and above the age of 60 years shall be eligible for appointment as a member of the Court. A member of the Court shall not be eligible for reappointment after the age of 65 years.

Article 4 – Terms of office of Members of the Court

1. Members of the Court shall be appointed to serve in such office for a period of five years and may be eligible for reappointment for another term of five years only; provided, however, that of the members of the Court appointed for the first time, the terms of office of four members shall expire at the end of three years and the terms of the other three members shall expire at the end of five years.
2. The members of the Court whose terms are to expire at the end of the above-mentioned initial periods of three and five years shall be chosen by lot to be drawn by the Chairman of the Authority immediately after the first appointments have been made.
3. At the expiration of the term of a member of the Court, the said member shall remain in office until the appointment and assumption of office of his successor. Though replaced, he shall finish any cases which he may have begun.
4. In the absence of the President, or where it becomes impossible for the President to continue to carry out his duties and functions, the Vice-President shall assume these assignments of the President.
5. In the temporary absence of a member of the Court, another member shall be nominated to replace him in accordance with the provisions of the Rules of Procedure.

6. Where a member of the Court can no longer perform his duties, the Executive Secretary shall inform Council thereof. Council shall then propose to the Authority that a new member be appointed to replace him.
7. In the event of gross misconduct, inability to exercise his functions or physical or mental disability on the part of one of its members, the Court shall meet in plenary session to take cognisance of the fact. The Court shall then draw up a report which will be promptly transmitted to the Authority which may decide to relieve the member in question of his post.
8. Where the President of the Court cannot participate in the proceedings of a given case, he shall be replaced by the Vice President or where the latter is absent he shall be replaced by another member of the Court appointed in accordance with the Rules of Procedure of the Court.
9. Where a member of the Court cannot participate in the proceedings of a given case, he shall inform the President of the Court who shall replace him with another member of the Court for the purposes of that case.
10. Whenever the Vice-President or any member of the Court replaces the President in accordance with the provisions of paragraph 8 of this Article, he shall exercise all the authority and powers vested in the office of the President of the Court.
11. No member of the Court may exercise any political or administrative function or engage in any other occupation of a professional nature.

Article 5 – Oath of office or solemn declaration

1. Before assuming office, members of the Court shall take an oath of office or make a solemn declaration before the Chairman of the Authority.
2. The oath or declaration shall be as follows:

"I _____ solemnly swear (declare) that I will perform my duties and exercise my powers as Member of the Court honorably, faithfully, impartially and conscientiously".

Article 6 – Privileges and immunities

1. The Court, and its members shall during the period of their tenure, enjoy privileges and immunities identical to those enjoyed by diplomatic missions and diplomatic agents in the territory of Member States, as well as those normally accorded to international courts and the members of such courts.
2. In this capacity, members of the Court shall not be liable to prosecution or arrest for acts carried out or statements made in the exercise of their functions.

Article 7 – Resignation

1. Member of the court may resign at any time by addressing a letter of resignation to the Executive Secretary, who shall forward the letter to the Authority.
2. In case of resignation of a member of the Court, his duties shall end. However, such a member shall continue to hold office until the appointment and assumption of office of his successor.
3. In case of resignation of any member of the Court, the Executive Secretary shall inform Council which shall propose two persons to the Authority who shall appoint one to fill the vacant post.

Article 8 – Replacement of any member of the Court

A person nominated to replace a member of the Court, whose term of office has not expired shall be appointed under the same conditions as his predecessor and shall hold office for the remainder of his predecessor's term.

Article 9 – Competence of the Court

1. The Court shall ensure the observance of law and of the principles of equity in the interpretation and application of the provisions of the Treaty.
2. The Court shall also be competent to deal with disputes referred to it, in accordance with the provisions of Article 56 of the Treaty, by Member States or the Authority, when such disputes arise between the Member States or between one or more Member States and the Institutions of the Community on the interpretation or application of the provisions of the Treaty.
3. A Member State may, on behalf of its nationals, institute proceedings against another Member State or Institution of the Community, relating to the interpretation and application of the provisions of the Treaty, after attempts to settle the dispute amicably have failed.
4. The Court shall have any powers conferred upon it, specifically by the provisions of this Protocol.

Article 10 – Advisory opinion

1. The Court may, at the request of the Authority, Council, one or more Member States, or the Executive Secretary, and any other institution of the Community, express, in an advisory capacity, a legal opinion on questions of the Treaty.
2. Requests for advisory opinion as contained in paragraph 1 of this Article shall be made in writing and shall contain a statement of the questions upon which advisory opinion is required. They must be accompanied by all relevant documents likely to throw light upon the question.
3. Upon receipt of the request referred to in paragraph 2 of this Article the Chief Registrar shall immediately inform Member States, notify them of the time limit fixed by the President for receipt of their written observations or for hearing their oral declarations.
5. In the exercise of its advisory functions, the Court shall be governed by the provisions of this Protocol which apply in contentions cases, where the Court recognises them to be applicable.

[Please note: Numbering as in original.]

Article 11 – Application to the Tribunal

1. Cases may be brought before the Court by an application addressed to the Court Registry. This application shall set out the subject matter of the dispute and the parties involved and shall contain a summary of the argument put forward as well as the plea of the plaintiff.
2. The Chief Registrar of the Court shall immediately serve notice of the application and of all documents relating to the subject matter of the dispute to the other party, who shall make known his grounds for defence, within the time limit stipulated by the rules of procedure of the Court. Each party to a dispute shall be represented before the Court by one or more agents nominated by the party concerned for this purpose. The agents may, where necessary, request the assistance of one or more Advocates or Counsels who are recognised by the laws and regulations of the Member States as being empowered to appear in Court in their area of jurisdiction.

Article 12 – Representation before the Court

Each party to a dispute shall be represented before the Court by one or more agents nominated by the party concerned for this purpose. The agents may, where necessary, request the assistance of one or more Advocates or Counsels who are recognized by the laws and regulations of the Member States as being empowered to appear in Court in their area of jurisdiction.

Article 13 – Proceedings before the Court

1. Proceedings before the Court shall consist of two parts; written and oral.
2. Written proceedings shall consist of the application entered in the Court, notification of the application, the defence, the reply or counter-statement, the rejoinder and any other briefs or documents in support.
3. Documents comprising the written proceedings shall be addressed to the Chief Registrar of the Court in the order and within the time limit fixed by the Rules of Procedure of the Court. A copy of each document produced by one party shall be communicated to the other party.
4. The oral proceedings shall consist of the hearing of parties, agents witnesses, experts, advocates or counsels.

Article 14 – Sittings of the Court

1. The President shall issue summons to the parties to appear before the court. He shall determine the roll of the Court and preside over its sittings.
2. Sittings and deliberations of the Court shall be valid when the President and at least two judges are present, but such that any sitting of the Court shall comprise of an uneven number of its members.
3. Sittings of the Court shall be public. The Court may however, sit in camera at the request of one of the parties or for reasons which only the Court may determine.

Article 15 – Production of documents

1. At any time, the Court may request the parties to produce any documents and provide any information or explanation which it may deem useful. Formal note shall be taken of any refusal.
2. The Court may also request a Member State which is not involved in the dispute or any Community Institution to make available any information which it deems necessary for the settlement of the dispute.

Article 16 – Enquiries and expert opinion

The Court may, in any circumstance, and, in accordance with its Rules of Procedure, order any manner of judicial enquiry summon any person, organisation or institution to carry out an enquiry or give an expert opinion.

Article 17 – Examination of witnesses

1. Witnesses upon whom a summon has been served must appear before the Court. They shall be heard under conditions specified in the Rules of Procedure of the Court.
2. Experts may testify as witnesses under oath, in accordance with the provisions of the Rules of Procedure of the Court.
3. All hearings shall be recorded and signed by the President and the Chief Registrar of the Court.

Article 18 – Deposition upon request

1. The Court may request the judicial authority of his place of residence to hear the evidence of a witness or an expert.
2. Such a request shall be made to the judicial authority in accordance with the conditions stipulated in the Rules of Procedure of the Court. Documents emanating from such hearing shall be transmitted to the Court under the same conditions.
3. Expenses incurred by this procedure shall be borne by the parties to the dispute.

Article 19 – Decisions of the Court

1. The Court shall examine the dispute before it in accordance with the provisions of the Treaty and its Rules of Procedure. It shall also apply, as necessary, the body of laws as contained in Article 38 of the Statutes of the International Court of Justice.
2. Decisions of the Court shall be read in open court and shall state the reasons on which they are based. Subject to the provisions on review contained in this Protocol, such decisions shall be final and immediately enforceable.
3. The Court shall give only one decision in respect of each dispute brought before it. Its deliberations shall be secret and its decisions shall be taken by a majority of the members.

Article 20 – Provisional measures and instructions

The Court, each time a case is brought before it, may order any provisional measures or issue any provisional instructions which it may consider necessary or desirable.

Article 21 – Application for intervention

Should a Member State consider that it has an interest that may be affected by the subject matter of a dispute before the Court, it may submit by way of a written application a request to be permitted to intervene.

Article 22 – Exclusivity of competence and recognition of the decisions of the Court

1. No dispute regarding or application of the provisions of the Treaty may be referred to any other form of settlement except that which is provided for by the Treaty or this Protocol.
2. When a dispute is brought before the Court, Member States or Institutions of the Community shall refrain from any action likely to aggravate or militate against its settlement.
3. Member States and Institutions of the Community shall take immediately all necessary measures to ensure execution of the decision of the Court.

Article 23 – Interpretation of decisions

If the meaning or scope of a decision or advisory opinion is in doubt, the Court shall construe it on application by any party or any Institution of the Community establishing an interest therein.

Article 24 – Legal costs

Unless the Court shall decide otherwise, each party to the dispute shall bear its own legal expenses.

Article 25 – Application for revision

1. An application for revision for a decision may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the decision was given, unknown to the Court and also to the party claiming revision, provided always that such ignorance was not due to negligence.
2. The proceedings for revision shall be opened by a decision of the Court expressly recording the existence of the new fact, recognising that it has such a character as to lay the case open to revision and declaring the application admissible on this ground.
3. The Court may require prior compliance with the terms of the decision before it admits proceedings in revision.
4. No application for revision may be after five (5) years from the date of decision.
5. The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 26 – Seat of the Court

1. The seat of the Court shall be fixed by the Authority.
2. However, where circumstances or facts of the case so demand, the Court may decide to sit in the territory of another Member State.

Article 27 – Session of the Court

1. Sessions of the Court shall be convened by its President.
2. The dates and duration of the sessions shall be fixed by the President and shall be determined by the roll of the Court.
3. The President and other members of the Court shall be bound to attend all sessions of the Court unless they are prevented from attending by any reasons duly explained to the Authority or the President of the Court, as the case may be.
4. (a) Subject to the provisions of this Protocol and its Rules of Procedure, the Court shall meet in plenary session when it is composed as stated in Article 3, paragraph 2 of this Protocol.
(b) Where, however, the Court being thus constituted and one of its members cannot continue to participate in the proceedings, the Court may, nevertheless, continue its hearing provided that the parties to the dispute, so agree.
5. The Court may form one or more Chambers, composed of three or more members when in its opinion, the nature of the business of the Court so requires.

Article 28 – Remuneration and fringe benefits

Subject to the provisions of this Protocol, the remuneration, allowances and all other benefits of the President and other members of the Court shall be determined by the Authority.

Article 29 – Registrars and other staff of the Court

1. The Court Registrar shall be by a Chief Registrar and Registrars. Subject to the provisions of this Protocol, the number of Registrars, the conditions of their appointments and their duties shall be determined by the Rules and Procedure of the Court.
2. Before taking office, the Chief Registrar and Registrars shall take an oath, or swear to a written declaration before the President of the Court as prescribed by the Rules of Procedure of the Court.
3. The Community shall appoint and provide the Court with the necessary officers and officials to enable it carry out its functions.

Article 30 – Expenses of the Court

All the operational expenses of the Court shall be charged to the budget of the Executive Secretariat of the Community.

Article 31 – Official languages

The official languages of the Court shall be English and French.

Article 32 – Rules of Procedure

The Court shall establish its own Rules of Procedure to be approved by the Council. Amendments thereto shall likewise be approved by Council.

Article 33 – Amendments

1. Any Member State or the President of the Court may after Consultation with the other members, submit proposals for amendments of this Protocol.
2. All proposals shall be transmitted to the Executive Secretariat which shall forward them to Member States within thirty days of receipt. Such amendments shall be examined by the Authority on the expiration of the thirty days notice to Member States.

Article 34 – Entry into force

1. This Protocol shall enter into force, provisionally, upon signature by the Head of State and Government of Member States and, definitively, upon ratification by at least seven (7) signatory States in accordance with the constitutional regulations in force in each Member State.
2. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat of the Community which shall transmit certified true copies of the Protocol to all Member States notify them of the date of deposit of the instruments of ratification and register the Protocol with the Organisation of African Unity, the United Nations and any other Organisation which may be determined by Council.
3. This Protocol is annexed to the Treaty and shall form an integral part thereof.