

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (91) 12

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING THE SETTING UP AND FUNCTIONING OF ARBITRAL TRIBUNALS
UNDER ARTICLE 42, PARAGRAPH 2,
OF THE CONVENTION OF 8 NOVEMBER 1990 ON LAUNDERING, SEARCH,
SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME

*(Adopted by the Committee of Ministers on 9 September 1991
at the 461st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, concluded at Strasbourg on 8 November 1990 (European Treaty Series, No. 141);

Considering that Article 42, paragraph 2, of that convention dealing with the settlement of disputes between Parties as to its interpretation or application, envisages, as an alternative to negotiation, submission of the dispute to the European Committee on Crime Problems or to the International Court of Justice, the setting up and functioning of arbitral tribunals whose decisions shall be binding upon the Parties to such disputes;

Considering the absence in the convention of any provisions as to the specific procedures to be followed by Parties concerned for the establishment of such arbitral tribunals, or any rules of procedure to be observed in the course of such arbitration;

Considering that such provisions might appropriately be reflected in a recommendation of the Committee of Ministers of the Council of Europe to the governments of the states signatories or parties to the convention;

Considering that reference to the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (European Treaty Series, No. 23) would not be appropriate for this purpose, in view of its limited number of Contracting Parties and the fact that it does not apply to states which are not members of the Council;

Desirous to present a single set of recommendations for the governments of all states, whether member states of the Council of Europe or not, which may be or become bound by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime,

Recommends the governments of such states to be guided, when seeking arbitration in accordance with Article 42, paragraph 2, of the aforementioned convention, by the following rules:

1. The Party to the convention requesting arbitration pursuant to Article 42, paragraph 2, shall inform the other Party in writing of the claim and of the grounds on which its claim is based.

2. Upon acceptance of the request for arbitration, the two Parties concerned shall establish an arbitral tribunal.
3. The arbitral tribunal shall consist of three members. Each Party shall nominate an arbitrator. Both Parties shall, by common accord, appoint the presiding arbitrator.
4. Failing such nomination or such appointment by common accord within four months from the date on which the arbitration was requested, the necessary nomination or appointment shall be entrusted to the Secretary General of the Permanent Court of Arbitration.
5. The Parties shall draw up a special agreement determining the subject of the dispute and the details of the procedure. Failing the conclusion of a special agreement within a period of six months from the date on which arbitration was requested, the dispute may be brought before the arbitral tribunal upon application of either Party. In the latter case, the tribunal shall establish its own procedure.
6. Unless otherwise agreed between the Parties, the tribunal shall decide on the basis of the applicable rules of international law ; in the absence of such rules, it shall decide *ex aequo et bono*.
7. If the dispute concerns the amount of compensation due to one Party as a result of its being held liable for damages in accordance with Article 35, paragraph 1, of the convention, the tribunal may establish the sum of such compensation or the apportionment of such sum.
8. Any third state which considers that its legitimate interests are involved in the dispute, may submit to the arbitral tribunal a request to intervene as a third party. It is for the tribunal to decide on this request.