I assent.

(L.S.)

GUIDO DE MARCO
President

11th October, 2002

ACT No. XXI of 2002

AN ACT to amend the European Convention Act, Cap 319.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and commencement.

1. (1) The short title of this Act is the European Convention (Amendment) Act, 2002.

(2) This Act shall be read and construed as one with the European Convention Act, hereinafter referred to as "the principal Act" and shall come into force on such date as the Prime Minister may by notice in the Gazette establish, and different dates may be so established for different purposes and different provisions thereof.

Cap. 319.

Amendment of article 2 of the principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) for the definition "Convention" there shall be substituted the following:

"'Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on the 4th November, 1950 and the First, Second, Third, Fourth, Fifth, Sixth and Seventh Protocols thereto signed in Paris on the 20th March 1952, and in Strasbourg on the 6th May 1963, 6th May 1963, 16th September 1963, 20th January

1966, 18th April 1983 and 22nd November 1984, respectively;" and

(b) for the definition "Human Rights and Fundamental Freedoms" there shall be substituted the following:

" "Human Rights and Fundamental Freedoms" means those rights and freedoms as set out in articles 2 to 18 (inclusive) of the Convention and articles 1 to 3 (inclusive) of the First Protocol, articles 1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol and articles 1 to 5 (inclusive) of the Seventh Protocol to the Convention, which articles are reproduced in the First Schedule to this Act;".

Addition of new article 4A to the principal Act.

3. Immediately after article 4 of the principal Act, there shall be added the following new article 4A:

"Special rules applicable in connection with article 3 of the Seventh Protocol to the Convention.

4A. (1) The provisions of paragraphs 22 to 25 (inclusive) of the Explanatory Report on the Seventh Protocol to the Convention reproduced in the Third Schedule to this Act shall apply to the interpretation of the provisions of the following provisions of this article and of article 3 of the Seventh Protocol to the Convention.

(2) The maximum compensation payable under article 3 of the Seventh Protocol to the Convention shall be ten thousand liri. Such compensation shall be fixed by agreement between the party claiming such compensation or failing such agreement by the Civil Court, First Hall, upon an application by the person claiming compensation made within six months of the date when the person's conviction has been reversed or such person has been pardoned.

(3) An appeal from the determination of the compensation by the Civil Court, First Hall, shall lie to the Court of Appeal by application filed within twenty days from the determination of the application by the Civil Court, First Hall.".

Substitution of article 7 of the principal Act.

4. For article 7 of the principal Act there shall be substituted the following:

"Transitory provision.

7. No contravention of articles 2 to 18 (inclusive) of the Convention or of articles 1 to 3 (inclusive) of the First Protocol committed before the 30th April 1987 or of articles

1 to 4 (inclusive) of the Fourth Protocol, articles 1 and 2 of the Sixth Protocol or of articles 1 to 5 (inlcusive) of the Seventh Protocol committed before the 1st April 2002, shall give rise to an action under article 4 of this Act.".

Amendment of First Schedule to the principal Act.

5. Immediately at the end of the First Schedule to the principal Act there shall be added the following:

"Articles 1 to 4 of the Fourth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 - Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2 - Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3 - Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collecitve measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4 - Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Articles 1 and 2 of the Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 - Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 - Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Articles 1 to 5 of the Seventh Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 1 - Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

a. to submit reasons against his expulsion,

b. to have his case reviewed, and

c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2 - Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as presecribed by law, or in cases in which the person concerned was tried in the first instance by the highese tribunal or was convicted following an appeal against acquittal.

Article 3 - Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4 - Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

Article 5 - Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with

their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.".

Addition of new Third Schedule to the principal Act.

6. Immediately after the Second Schedule to the principal Act there shall be added the following Third Schedule:

"Third Schedule

(Article 4A)

Paragraphs 22 to 25 of the Explanatory Report to the Seventh Protocol to the Convention.

22. This article provides that compensation shall be paid to a victim of a miscarriage of justice, on certain conditions.

First, the person concerned has to have been convicted of a criminal offence by a final decision and to have suffered punishment as a result of such conviction. According to the definition contained in the Explananatory Report of the European Convention on the International Validity of Criminal Judgements, a decision is final "if, according to the traditional expression, it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them"[1]. It follows therefore that a judgement by default is not considered as final as long as the domestic law allows the proceedings to be taken up again. Likewise, this article does not apply in cases where the charge is dismissed or the accused person is acquitted either by the court of first instance or, on appeal, by a higher tribunal. If, however, in one of the States in which such a possibility is provided for[2] the person has been granted leave to appeal after the normal time of appealing has expired, and his conviction is then reversed on appeal, then subject to the other conditions of the article, in particular the conditions described in paragraph 24 below, the article may apply.

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[1]Commentary on Article 1a: Explanatory Report of the European Convention on the International Validity of Criminal Judgements, publication of the Council of Europe, 1970, p.22.

[2]See paragraph 19 of the same of the same Explanatory Report which reads as follows:

"19. In some states, a person wishing to appeal to a higher tribunal must in certain cases apply for leave to appeal. The right to apply to a tribunal or an administrative authority for leave to appeal is itself to be regarded as a form of review within the meaning of this article".

23. Secondly, the article applies only where the person's conviction has been reversed or he has been pardoned, in either case on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice - that is, some serious failure in the judicial process involving grave prejudice to the convicted person. Therefore, there is no requirement under the article to pay compensation if the conviction has been reversed or a pardon has been granted on some other ground. Nor does the article seek to lay down any rules as to the nature of the procedure to be applied to establish a miscarriage of justice. This is a matter for the domestic law or practice of the state concerned. The words "or he has been pardoned" have been included because under some systems of law pardon, rather than legal proceedings leading to the reversal of a conviction, may in certain cases be the appropriate remedy after there has been a final decision.

24. Finally, there is no right to compensation under this provision if it can be shown that the non-disclosure of the unknown fact in time was wholly or partly attributable to the person convicted.

25. In all cases in which these preconditions are satisfied, compensation is payable "according to the law or the practice of the state concerned." This does not mean that no compensation is payable if the law or practice makes no provision for such compensation. It means that the law or practice of the state should provide for the payment of compensation in all cases to which the article applies. The intention is that states would be obliged to compensate persons only in clear cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned was clearly innocent. The article is not intended to give a right of compensation where all the preconditions are not satisfied, for example, where an appellate, court has quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge.".

Transitory provision.

7. Article 4A of the principal Act as amended by this Act shall apply with regard to any conviction reversed before the date of coming into force of this Act or a pardon granted before such date as if such reversal or pardon was given on the coming into force of this Act.

A 1840

Passed by the House of Representatives at Sitting No.795 of 8th October, 2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives