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Ensuring the right to fair trial in the context of State immunities: how to strike the right balance?

Motion for a resolution

tabled by Ms Lesia VASYLENKO and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

According to the current jurisprudence of the International Court of Justice and the European Court of Human Rights, a victim of aggression or crime against humanity is not allowed to sue a foreign State in domestic courts of their country due to protection of State immunity. As the European Court of Human Rights notes in its case law, State immunity is necessary to ensure international comity and friendly relations between States and, therefore, does not violate the right to fair trial enshrined in Article 6 of the European Convention on Human Rights.

But what happens if a State abuses its immunity by invading its neighbour or committing grave human rights violations? Arguably, in this case, immunity will not advance the cause of international peace and, therefore, should not be a bar to compensation lawsuits. Recent developments in domestic practice of Italian, Greek, South Korean and Ukrainian courts, placing particular emphasis on the right to fair trial, absence of other remedies and abuse of its immunity by the State, can no longer be overlooked by international tribunals.

It is necessary to provide an overview of jurisprudential conflict between international and some of national tribunals with regard to the scope of State immunity and the right to fair trial, to underline the need for a human-centric, not State-centric approach to the issue and to contribute to the development of modern international law and the European Convention on Human Rights. Finally, there is a need to explore the legality of measures lifting State immunity as countermeasures under international law and provide advice on good practices as to situations where competing interests justify lifting of immunity, as well as to enforcement of relevant domestic courts' decisions in other jurisdictions.

Signed (see overleaf)



Signed¹:

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