



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

Strasbourg, 25/02/02

CAHDI (2002) 1

**COMMITTEE OF LEGAL ADVISERS  
ON PUBLIC INTERNATIONAL LAW  
(CAHDI)**

**23rd meeting  
Strasbourg, 4 - 5 March 2002**

**DECISIONS OF THE COMMITTEE OF MINISTERS CONCERNING THE CAHDI**

Secretariat memorandum  
Prepared by the Directorate General of Legal Affairs

**Foreword**

At their 762<sup>nd</sup> meeting, (Strasbourg, 5 September 2001), the Committee of Ministers at Deputies level considered Recommendation 1523 (2001) of the Parliamentary Assembly on domestic slavery (reproduced in Appendix I) and decided to bring it to the attention of their Governments and assigned ad hoc terms of reference to the Steering Committee for Equality between Women and Men (CDEG), the European Committee on Crime Problems (CDPC), and the Committee of Legal Advisers on Public International Law (CAHDI) (reproduced in appendix II).

The terms of reference of the CAHDI expired on 30 March 2002 and concern particularly the issue of immunity for jurisdiction.

At its 22<sup>nd</sup> meeting, the CAHDI held an exchange of views regarding Recommendation 1523 (2001) of the Parliamentary Assembly and asked the Secretariat to prepare a preliminary draft opinion to be circulated to delegations for comments.

On the basis of the comments received the Secretariat revised the preliminary draft opinion as it now appears in Appendix III.

**Action required**

Members of the CAHDI are called upon to consider and approve the opinion and submit it to the Committee of Ministers.

## Appendix I

### Parliamentary Assembly of the Council of Europe

#### Recommendation 1523 (2001)<sup>[1]</sup>

##### Domestic slavery

1. In the last few years a new form of slavery has appeared in Europe, namely domestic slavery. It has been established that over 4 million women are sold each year in the world.
2. In this connection the Assembly recalls and reaffirms Article 4, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits slavery and servitude, and also the definition of slavery derived from the opinions and judgments of the European Commission of Human Rights and the European Court of Human Rights.
3. The Assembly also recalls Article 3 of the ECHR, which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment, and Article 6, which proclaims the right of access to a court in civil and criminal matters, including cases where the employer enjoys immunity from jurisdiction.
4. The Assembly also refers to the European Convention on Mutual Assistance in Criminal Matters (1959) (ETS No. 30), the European Convention on Extradition (1957) (ETS No. 24) and the European Agreement on "au pair" Placement (1969) (ETS No. 68).
5. It notes that the victims' passports are systematically confiscated, leaving them in a situation of total vulnerability with regard to their employers, and sometimes in a situation bordering on imprisonment, where they are subjected to physical and/or sexual violence.
6. Most of the victims of this new form of slavery are in an illegal situation, having been recruited by agencies and having borrowed money to pay for their journey.
7. The physical and emotional isolation in which the victims find themselves, coupled with fear of the outside world, causes psychological problems which persist after their release and leave them completely disoriented.
8. The Assembly also deplores the fact that a considerable number of victims work in embassies or in the homes of international civil servants who, under the Vienna Convention on Diplomatic Relations of 1961, enjoy immunity from jurisdiction and enforcement and are covered by the principle of inviolability of persons and property.

9. It regrets that none of the Council of Europe member states expressly make domestic slavery an offence in their criminal codes.

10. It accordingly recommends that the Committee of Ministers ask the governments of member states to:

- i. make slavery and trafficking in human beings, and also forced marriage, offences in their criminal codes;
- ii. strengthen border controls and harmonise policies for police co-operation, especially with respect to minors;
- iii. ensure that police officers are adequately trained to deal with victims of slavery and increase the number of women officers;
- iv. amend the Vienna Convention in order to waive diplomatic immunity for all offences committed in private life;
- v. sign and ratify the Convention against Transnational Organised Crime and its additional protocols (December 2000);
- vi. protect the rights of victims of domestic slavery by:
  - a. generalising the issuing of temporary and renewable residence permits on humanitarian grounds;
  - b. taking steps to provide them with protection and with social, administrative and legal assistance;
  - c. taking steps for their rehabilitation and their reintegration, including the creation of centres to assist, among others, victims of domestic slavery;
  - d. developing specific programmes for their protection;
  - e. increasing victims' time limits for bringing proceedings for offences of slavery;
  - f. establishing compensation funds for the victims of slavery;

vii. give accurate information about the risks of working abroad to domestic workers and others when permits are requested, for instance at embassies;

viii. avoid all gender discrimination in the issuing of work permits to domestic workers.

11. The Assembly also recommends that the Committee of Ministers ask the relevant expert committee(s) to draw up a domestic workers' charter of rights.

<sup>[1]</sup> *Assembly debate* on 26 June 2001 (18th Sitting) (see [Doc. 9102](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Connor; and [Doc. 9136](#), opinion of the Social, Health and Family Affairs Committee, rapporteur: Mrs Belohorská).

*Text adopted by the Assembly on 26 June 2001 (18th Sitting).*

## Appendix II

### AD HOC TERMS OF REFERENCE FOR THE CAHDI

**1. Name of Committee:**

*Ad hoc* Committee of Legal Advisers on Public International Law (CAHDI)

**2. Source:**

Committee of Ministers

**3. Completion date:**

31 March 2002

**4. Terms of Reference:**

To give an opinion on Parliamentary Assembly Recommendation 1523 (2001) on domestic slavery and in particular on the question of immunity from jurisdiction

**5. Committee(s) informed of the terms of reference for information:**

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### Appendix III

#### PRELIMINARY DRAFT OPINION OF THE CAHDI ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1523 (2001) ON DOMESTIC SLAVERY

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 22<sup>nd</sup> and 23<sup>rd</sup> meetings in Strasbourg respectively on 11-12 September 2001 and on 4-5 March 2002. The agenda of both meetings included an item on "Decisions of the Committee of Ministers concerning the CAHDI".
2. In the framework of this item, pursuant to the Council of Ministers' decision at their 762<sup>nd</sup> meeting (Strasbourg, 5 September 2001), the CAHDI examined Parliamentary Assembly Recommendation 1523 (2001) on Domestic Slavery and, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, concentrated on what it understood to be the public international law issues connected with the Recommendation, and adopted the following

#### OPINION

3. The CAHDI welcomes the adoption by the Parliamentary Assembly of Recommendation 1523 (2001) which acknowledges the seriousness of the issue of domestic slavery and the need to deal with it appropriately in order to prevent this phenomenon and to protect the victims' rights.
4. With regard to *paragraph 10, i.*, notwithstanding the possible opinion of the Steering Committee on Crime Problems (CDPC), the CAHDI notes that the fact that domestic slavery is generally not foreseen as a specific criminal offence does not exclude the application of other provisions of national criminal codes to this behaviour, for instance, those incriminating restrictions of personal freedom or movement, sexual abuse, etc. and that this is the case in most member States. Moreover, States would be liable for such acts under the provisions of the European Convention on Human Rights (ECHR) as the Parliamentary Assembly itself recognizes in paragraphs 2 and 3.
- 4 *bis* In certain circumstances, States may have a positive obligation in relation to such matters by virtue of Articles 3 and 4 of the European Convention of Human Rights. The CAHDI points out that the European Court of Human Rights has recently held that domestic legislation providing for State immunity in respect of disputes between a diplomatic mission and the members of staff of the mission does not infringe Article 6(1).<sup>2</sup>
5. With regard to *paragraphs 8 and 10, iv* concerning the possible amendment of the Vienna Convention on Diplomatic Relations of 1961 (VC), since the VC is a universal multilateral treaty, member States of the Council of Europe cannot undertake any amendments thereof.
6. The CAHDI stresses that the VC is a key element for the stability of diplomatic relations. Any question of proposed amendment thereto is therefore a sensitive matter and would have to be carefully considered.

<sup>2</sup> Proposal of the United Kingdom replacing current paragraph 4.

7. Excluding immunity for *all* offences committed by diplomats in the sphere of their private life as suggested by the Parliamentary Assembly would amount in practice to reduce the scope of immunities granted under international law to functional immunity and thus put at stake the legitimate interest of the international community in facilitating international relations between States.
8. In any event, the CAHDI notes that the VC does not grant immunity to international civil servants although they do enjoy some degree of immunity by virtue of other instruments, e.g. headquarters agreements, specific conventions on privileges and immunities, etc.
9. The CAHDI recognises that diplomatic immunities may represent an obstacle for the prosecution of the authors of offences connected with domestic slavery. However, such immunities do not exempt the persons enjoying them from the duty to respect the laws and regulations of the receiving State and could not be considered incompatible with the provisions of the ECHR.
10. Moreover, the CAHDI notes that under the VC the receiving State may request the sending State to waive the immunity of a diplomat or any other member of the staff of the mission to allow them to be prosecuted where appropriate and, if such waiver is not granted, may declare the individual concerned *persona non grata* or not acceptable and expel him or her.
11. Further, the CAHDI wishes to recall that the VC does not exclude the authorities of receiving State from exerting other methods of control over diplomats and other staff of missions in their territory and dealing with abuses in a way which is fully compatible with the VC. Such methods could include, for instance, devising procedures for the exchange of information between Ministries of Foreign Affairs regarding mistreatment of domestic employees and abuses of immunities and privileges in relation thereto so that, where necessary, the diplomat concerned could be declared *persona non grata* as provided by the VC, or a resident permit for the domestic servant could be withheld (e.g. on applying for entry).
12. The CAHDI would like to stress furthermore that according to the VC, the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State and, therefore, States should be encouraged to exercise such jurisdiction to prosecute offences connected with domestic slavery<sup>3</sup>.
13. In view of the above, the CAHDI concludes that in order to tackle the problem of domestic slavery, amending the VC is not a realistic solution nor is it advisable on policy grounds, and that the focus should be put on making use of the possibilities that the VC and international co-operation mechanisms offer.

<sup>3</sup> Additional paragraph proposed by Portugal.