

Strasbourg, 15/07/10

CAHDI (2010) 23

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

**40<sup>th</sup> meeting  
Tromsø, Norway, 16-17 September 2010**

**DOCUMENTS RELATED TO THE  
REQUEST FOR POSSIBLE COMMENTS OF THE CAHDI ON  
RECOMMENDATION 1920 (2010) ON  
“REINFORCING THE EFFECTIVENESS OF COUNCIL OF EUROPE TREATY LAW”**

Document prepared by the Secretariat of the CAHDI

**Documents related to the request for possible comments of the CAHDI on  
Recommendation 1920 (2010) on “Reinforcing the effectiveness of Council of Europe  
treaty law”**

**1. The reform process of the Secretary General**

**1.a Introduction to the reform process**

On 20 January 2010<sup>1</sup>, the Secretary General presented to the Committee of Ministers a first series of measures aimed at revitalising the Council of Europe as a political body and innovative organisation by concentrating its work on fewer projects, selected because they offer the highest added value and present comparative advantages, and developing a flexible organisation which is more visible and relevant for the citizens of Europe. The Committee of Ministers endorsed the Secretary General's approach to the reform process.

The priorities for 2011 have been determined in the context of the reform of the Organisation and the entry into force of the Lisbon Treaty and its consequences on European Union (EU) - Council of Europe relations. The process also has taken into account the Organisation's difficult budgetary situation resulting from the need to meet a number of obligatory adjustments, a shortfall in receipts and the decision to abandon the practice of using the credit balances from previous years to finance the ordinary budget.

**1.b Priorities for 2011 – Secretary General's proposals  
CM(2010)42rev – 30 April 2010**

“The Secretary General therefore proposes to focus on the following areas in 2011: (...)

- **the review of the relevance of Council of Europe conventions**

Council of Europe conventions constitute a unique integrated system collectively defined and agreed upon by the member States. They are a key strength and comparative advantage of the Organisation. The Secretary General proposes to take stock of the situation by conducting a critical review of their relevance. This will provide the basis for decisions on follow-up including measures to increase the visibility and the number of parties to relevant conventions.” (...)

**1.c Decision taken by the Committee of Ministers related to the proposals  
made by the Secretary General**

On 5 May 2010<sup>2</sup>, the Deputies “welcomed the strategic approach of the Secretary General to the prioritisation of the Programme of Activities and Budget and supported his proposals for Priorities for 2011 (...) and agreed to resume consideration of this item at the latest at their 1089<sup>th</sup> meeting (30 June 2010), with a view to taking appropriate decisions.”<sup>3</sup>

---

<sup>1</sup> 1075<sup>th</sup> meeting, document DD(2010)22rev.

<sup>2</sup> 1084<sup>th</sup> meeting, 5 May 2010

<sup>3</sup> See document : CM/Del/Dec(2010)1084/1.8E / 07 May 2010

2. **Documents and information related to the Convention system of the Council of Europe**

2.a **“Towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority”**

2.a.i ***Reply to Parliamentary Assembly Recommendation 1458 (2000)  
“Towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority”  
(Adopted by the Committee of Ministers on 20 June 2002 at the 800th meeting of the Ministers’ Deputies)***

1. The Committee of Ministers has carefully examined Recommendation 1458 (2000) entitled “Towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority”. The Committee of Ministers recalls that the examination of Recommendation 1458 (2000) forms part of a process of reflection that began already some years ago. Following the second Summit of Heads of State and Government of the Council of Europe (1997), the Czech Republic drew up a proposal for a general judicial authority which was intensively discussed by the Committee of Ministers. This proposal has been taken up and developed by the Parliamentary Assembly.

2. Before replying to the recommendation, the Committee of Ministers sought the opinions of the Ad hoc Committee of Legal Advisers on Public International Law (CAHDI), the European Commission for Democracy Through Law (Venice Commission) and the European Court of Human Rights. These opinions were adopted in September 2000, December 2000 and June 2001 respectively (see Appendices 1, 2 and 3). The Committee of Ministers generally agrees with these opinions.

3. The Committee of Ministers shares the view of the Assembly that the establishment of efficient and effective mechanisms of follow-up and control for the Organisation's large corpus of legally binding texts is a question of vital importance. However, the Committee of Ministers is not convinced that the setting-up of an entirely new body, a “General Judicial Authority” of the Council of Europe, corresponds to a real need. For the reasons set out below, its creation appears neither necessary nor expedient for the current corpus of Council of Europe Conventions.

4. Although it has no specific mandate in this respect, the Venice Commission can be asked to give non-judicial and non-binding interpretations of Council of Europe conventions lacking specific interpretation mechanisms, at the request of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of Europe, the Secretary General or by a State participating in the work of the Commission (Article 3, paragraph 2, of the Statute). However, action by the Venice Commission in this field can only be subsidiary, respecting the competences of existing monitoring and follow-up mechanisms.

5. Assigning new competences to the European Court of Human Rights would not constitute an appropriate solution. The Court would be asked to give opinions on a variety of issues, many of which do not fall within its traditional field of expertise. The Committee of Ministers fully shares the concern expressed by the Court itself that “the interpretation of the different conventions would require a degree of specialised knowledge in a wide variety of sectors which it would be difficult to assemble in a single body”. The Court's effectiveness would only suffer if new competences were added to its already existing heavy workload.

6. Some Council of Europe conventions have created effective non-judicial monitoring mechanisms (e.g. the Framework Convention for the Protection of National Minorities). The

application of other conventions is regularly followed by conventional (e.g. the Standing Committee of the Convention on Conservation of European Wildlife and Natural Habitat or the Monitoring Group of the Anti-Doping Convention) or steering committees, in particular the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the European Committee for Social Cohesion (CDCS) and the Steering Committee on Local and Regional Democracy (CDLR). The Organisation's legal adviser regularly assists these committees in questions regarding the interpretation and application of Council of Europe treaties.

7. The Committee of Ministers acknowledges the interest to improve the follow-up of future conventions, a concern expressed in the Report of the Committee of Wise Persons (§ 13). Judicial or quasi-judicial procedures have so far only occasionally been used in Council of Europe treaties. Henceforth, the Committee of Ministers could examine the expediency of including appropriate control and interpretation mechanisms in each new convention, taking into account its object and purpose.

8. Finally, the Committee of Ministers wishes to record its appreciation of the Parliamentary Assembly's continuing interest in the functioning of Council of Europe treaties, which are important building blocks of a common European legal area of fundamental rights, security and justice.

***2.a.ii Parliamentary Assembly Recommendation 1458 (2000) "Towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority"***

1. The Assembly recalls that the aim of the Council of Europe is to achieve a greater unity between its members, and considers that this aim may be pursued inter alia by the conclusion of international treaties.

2. There are now more than 175 conventions and protocols concluded within the Council of Europe.

3. The existence of a large corpus of legally binding texts requires efficient and effective mechanisms of monitoring and control.

4. There is also a need for uniform interpretation and application of the Council of Europe conventions in the different member states and among the different legal instruments.

5. The Assembly is therefore convinced that it is necessary that the member states of the Council of Europe should agree on a procedure that would ensure a uniform interpretation of legal texts commonly agreed by them.

6. The Assembly is aware of the fact that a certain number of Council of Europe conventions - such as the European Convention on Human Rights and the revised Social Charter, and others - already provide for mechanisms to ensure control as well as uniform interpretation and application.

7. A large number of conventions have no such mechanism, however.

8. In addition to the increasing number of conventions, there is also an increasing number of member states, and it is more difficult to speak of a common legal tradition among them than it was in the past. Therefore a power on the part of the ?general? judicial authority to give - as well as legally binding opinions - advisory, non-binding legal opinions could become a more practical and more frequently used competence.

9. For these reasons the Assembly recommends that the Committee of Ministers set up a ?general judicial authority? of the Council of Europe which would provide the mechanism for the uniform interpretation of Council of Europe treaties starting with those still to be concluded and with a selected number of the existing conventions. The competencies of the ?general judicial authority? would be three-fold:

i. to give binding opinions on the interpretation and application of Council of Europe conventions at the request of one or several member states or at the request of the Committee of Ministers or of the Parliamentary Assembly;

ii. to give non-binding opinions at the request of one or several member states or of one of the two organs of the Council of Europe;

iii. to make preliminary rulings, at the request of a national court, on lines similar to those of Article 177 of the Rome Treaty of 1956 establishing the European Economic Community.

***2.a.iii Report "Towards a uniform interpretation of Council of Europe conventions: creation of a general judicial authority"<sup>4</sup>***

*Summary*

It is clear that the 175 or more conventions and protocols concluded within the Council of Europe require efficient and effective mechanisms of monitoring and control. Some of the Council of Europe conventions provide such a mechanism, such as the European Court of Human Rights, which guarantees respect for the European Convention on Human Rights. It would, however, be useful if a "general judicial authority" were to be set up for all those conventions which do not have such a mechanism. This "general judicial authority" would make binding and non-binding opinions on the interpretation and application of the Council of Europe's conventions and should also be allowed to make preliminary rulings at the request of a national court, on similar lines as the European Court of Justice in Luxembourg does in respect of the treaties and other legal texts of the European Union.

**2.b The ratification of Council of Europe conventions**

***2.b.i Parliamentary Assembly Resolution 894 (1988)<sup>5</sup> on "The ratification of Council of Europe conventions"***

The Assembly,

1. Considering that, since its foundation in 1949, more than one hundred and twenty-five European conventions or protocols thereto have been drawn up in the framework of the Council of Europe ;

2. Considering that these conventions constitute a most important body of European legislation ;

3. Welcoming the fact that some of these conventions - such as the European Convention on Human Rights (1950) and the European Cultural Convention (1954) - have been ratified by all Council of Europe member states ;

---

<sup>4</sup> See Doc. 8662, report of the Committee of Legal Affairs and Human Rights, rapporteur : Mr. Svoboda

<sup>5</sup> Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 March 1988.

4. Regretting however that many European conventions have been ratified by a limited number of Council of Europe member states, and that some of these conventions, consequently, have not entered into force ;

5. Considering that in many cases the effectiveness of Council of Europe conventions is considerably reduced not only by failure to ratify, but also by reservations or interpretative declarations made by member states at the time of signature or ratification, or by the exclusion of optional provisions (in the European Social Charter (1961) for instance) or optional chapters (in the European Convention for the Peaceful Settlement of Disputes (1957) for instance) ;

6. Considering that it is necessary that a publication on the main treaties and conventions of the Council of Europe be put at the disposal of the public and of practising lawyers ;

7. Desirous to do whatever is in its power to promote the ratification and effective implementation of Council of Europe conventions in the twenty-one member states ;

8. Paying tribute to the useful interventions of its individual members and its Committee on Parliamentary and Public Relations at national level in favour of Council of Europe conventions,

9. Instructs its Legal Affairs Committee, in close co-operation with its Committee on Parliamentary and Public Relations and with any other of its committees which may be concerned :

a. to take any action which may be advisable in order to promote and speed up, as a matter of high priority, the signature and ratification of the following Council of Europe conventions :

- European Convention for the Peaceful Settlement of Disputes (1957) ;

- European Social Charter (1961) ;

- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974) ;

- European Convention on the Legal Status of Migrant Workers (1977) ;

- European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (1978) ;

- Convention on the Conservation of European Wildlife and Natural Habitats (1979) ;

- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (1980) ;

- European Agreement on Transfer of Responsibility for Refugees (1980) ;

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) ;

- European Convention on the Compensation of Victims of Violent Crimes (1983) ;

- European Convention on Offences relating to Cultural Property (1985) ;

- European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985) ;

- Convention for the Protection of the Architectural Heritage of Europe (1985) ;
  - European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1986) ;
  - Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (1983) ;
  - Protocol No. 7 (1984) to this convention ;
  - Protocol No. 8 (1985) to this convention ;
  - European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) ;
- b. to report back, if necessary, to the Assembly on ratifications and implementation of these conventions ;
10. Calls on its individual members to intervene in their national parliaments and with their governments in favour of the conventions enumerated in paragraph 9.a above ;
11. Asks for the publication by the Secretariat General of the Council of Europe of a brochure in several languages under the title of "The Legal Community in the Europe of the Twenty-one", with a selection of the main treaties and conventions of the Organisation and their explanations ;
12. Instructs its Legal Affairs Committee to make a separate study on reservations to Council of Europe conventions.

## ***2.b.ii Report on the ratification of Council of Europe conventions<sup>6</sup> - Introduction***

### **"1. Introduction**

1.1. This report originated with a communication from the Committee of Ministers to the Assembly on the assessment of certain Council of Europe treaties (Doc. 5247 of 27 June 1984). In a covering letter, the Chairman of the Committee of Ministers informed the President of the Assembly that the Ministers' Deputies hoped that the document would "meet the Assembly's repeated request that it should be informed of the reasons for the failure to ratify, or delay in ratifying, certain Council of Europe treaties". In September 1987, at the request of the Legal Affairs Committee, the Directorate of Legal Affairs prepared a revised version of the 1984 communication<sup>1</sup> which contains information brought up to date on 1 August 1987. At that date there were 124 treaties of the Council of Europe (European conventions or agreements or protocols thereto). Out of these 124 legal instruments the Directorate of Legal Affairs had made a selection of 24 which have in common the fact that they have been ratified by fewer than eight member states, to the exclusion of the more recent treaties<sup>2</sup> where the member states should be allowed the time needed to ratify them, remembering the lengthiness of national ratification procedures.

1.2. The Legal Affairs Committee considered the communication at several of its meetings and then instructed me to select, with the help of the Director of Legal Affairs, a number of

---

<sup>6</sup> See Docs. 5857, 5247 and 5781, and References Nos. 1446 and 1580, report of the Legal Affairs Committee adopted on 22 February 1988, rapporteur: Mr. Gadiant.

Council of Europe conventions where parliamentary intervention might be useful for their ratification and further implementation. These conventions are listed in Chapter 3 of this report.”

## **2.c Parliamentary Assembly Recommendation 870 (1979)<sup>7</sup> on “The ratification of Council of Europe conventions and agreements**

The Assembly,

1. Considering that the drafting of conventions and agreements, intended to serve collectively as a common corpus of European legal standards, is one of the principal functions of the Council of Europe ;
2. Welcoming the fact that more than 100 conventions, agreements and protocols have been signed to date within the Council of Europe ;
3. Considering that these instruments enter into force only when they have received the requisite number of ratifications ;
4. Noting that in many cases signatures have still not been followed by ratification after several years ;
5. Considering that the initiative for the ratification of an international agreement generally lies with the government, which decides on the expediency of tabling the corresponding bill in parliament ;
6. Welcoming the initiative taken in certain national parliaments whereby the government is invited to report on Council of Europe conventions and to state which of them the state has not ratified, giving reasons for that situation ;
7. Regretting the failure of the Committee of Ministers, with two exceptions, to take any positive action on the wish expressed by the Assembly in Recommendation 721 (1973) to receive the texts of draft European conventions and agreements drawn up in the Council of Europe before their final approval and opening for signature ;
8. Believing that the Council of Europe, for its part, must concern itself with the fate of the conventions it has drawn up, and that in this connection it could embark upon experimental action relating to a small number of instruments,
9. Recommends that the Committee of Ministers :
  - a. invite the member governments to report to their parliaments at regular intervals on the state of ratification of Council of Europe conventions ;
  - b. instruct all the steering committees to review the state of signatures and ratification within their sphere of competence at regular intervals ;
  - c. instruct the Secretary General to invite the member governments to send information at periodic intervals on prospects for the signature and ratification of certain conventions, and to draft a report to the Committee of Ministers for communication to the Assembly ;
  - d. invite those member governments that have not yet signed or ratified the following four instruments to do so at the earliest opportunity :

---

<sup>7</sup> Text adopted by the Standing Committee, acting on behalf of the Assembly, on 28 June 1979.



- European Convention on State Immunity, and Additional Protocol (1972) ;
- Additional Protocol to the European Convention on Extradition (1975) ;
- Second Additional Protocol to the European Convention on Extradition (1978) ;

e. inform the Assembly, in accordance with Resolution (61) 6 of the Committee of Ministers, of the reasons for non-ratification or delay in ratification of those instruments.

### **3. Documents and information related to the notion of the “Rule of Law”**

#### **3.a “Council of Europe action to promote the rule of law” – Resolution No. 3 taken at the 29<sup>th</sup> Council of Europe Conference of Ministers of Justice<sup>8</sup>**

“THE MINISTERS participating in the 29th Council of Europe Conference of Ministers of Justice (Tromsø, Norway, 18-19 June 2009),

1. Reaffirming the importance of the rule of law as a basis of genuine democracy;
2. Recalling that it is the core objective of the Council of Europe to preserve, strengthen and promote the rule of law, human rights and democracy;
3. Referring to the three Declarations of the Heads of State and Government of the member states of the Council of Europe made on the occasions of the Council of Europe Summits of Vienna (1993), Strasbourg (1997) and Warsaw (2005) expressing their attachment and commitment to the rule of law;
4. Recognising that fair, efficient and accessible judicial systems are essential elements of the rule of law;
5. Acknowledging with appreciation the initiative taken in 2008 by the Swedish Chairmanship of the Committee of Ministers of the Council of Europe to make better use of the Council of Europe’s potential in enhancing the rule of law, and referring to the document “The Council of Europe and the rule of law” (CM (2008) 170 of 21 November 2008) which has been prepared in this context;
6. Recognising the outstanding and essential contribution of the European Convention on Human Rights, the European Court of Human Rights and the Committee of Ministers, as supervisor of the execution of the Court’s judgments, to developing and upholding common European rule of law standards and principles in all member states;
7. Noting that the rule of law should be ensured in international relations as well as within states;
8. Recognising also the role of the other Council of Europe mechanisms in the human rights and legal fields in monitoring and reinforcing the rule of law in the member states;
9. Convinced of the need to propose concrete steps in order to enhance the Council of Europe’s capacity to actively promote the rule of law in all member states through existing as well as new standards and their effective implementation, as well as to develop needs assessment based co-operation programmes;

---

<sup>8</sup> Tromsø, 18-19 June 2009

10. Recognising that the variety of rule of law-related activities of the Council of Europe, both in nature and topic, call for closer coordination between its different sectors as well as the use of synergies with other international organisations;

11. Stressing the importance of assessing, on a more comprehensive and regular basis, the state of the rule of law in the member states in order to adopt or develop Council of Europe standards and/or assist member states in addressing specific issues through targeted technical cooperation;

12. Underlining the importance of the Memorandum of Understanding between the Council of Europe and the European Union of 11 May 2007, which called for closer cooperation, in particular regarding the promotion and protection of the rule of law with a view to establishing common standards and promoting a Europe without dividing lines;

13. Convinced of the need to effectively implement legal standards of the Council of Europe and to further strengthen the Council of Europe's potential as the only pan-European standard-setting organisation:

\*\*\*

14. REITERATE their support for action, at all levels and in all sectors of the Council of Europe, in pursuance of the core objective of the Organisation: the preservation, strengthening and promotion of the rule of law in all member states;

15. INVITE the Committee of Ministers:

a. to instruct the Secretary General to enhance coordination of the Council of Europe's activities regarding the rule of law;

b. to make better use of the existing bodies, while avoiding duplication with existing evaluation mechanisms, with a view to permitting a regular review in member states of the different aspects defining a state governed by the rule of law, as identified in the above-mentioned document "The Council of Europe and the rule of Law - an overview", notably on the basis of the case law of the European Court of Human Rights, the execution of its judgments, contributions by the relevant steering committees and advisory bodies as well as the findings of monitoring bodies;

c. on this basis, to target better technical co-operation and the development of standards;

16. INVITE the Committee of Ministers to consider measures to strengthen international co-operation between states in administrative matters, while providing adequate safeguards for the rights of individuals and their privacy, including an examination of existing Council of Europe conventions in this field with a view to reviewing them if necessary;

17. INVITE the Committee of Ministers to give high priority and adequate resources to rule of law-related activities in the civil, penal and administrative fields within the Council of Europe;

18. CALL ON the Council of Europe to intensify its rule of law-related activities and invite the European Union to cooperate with it in this work, with a view to ensuring coherence, synergies and the best possible use of available resources, notably in the context of existing or possible future rule of law assessment activities;

19. RECOMMEND that the Council of Europe pursues its work of promoting the rule of law worldwide by developing co-operation with the United Nations, the OSCE/ODIHR and other international institutions working in this field and by increasing the global reach of relevant Council of Europe conventions, such as:

- the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108, 1981) and its Additional Protocol regarding supervisory authorities and transborder data flows (CETS No. 181, 2001);
- the Convention on Cybercrime (CETS No. 185, 2001) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No. 189, 2003);
- the Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), and
- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007).

**3.b Stocktaking of the Swedish Chairmanship and decisions to be adopted -  
b. The Council of Europe and the Rule of Law - An overview<sup>9</sup> -  
Introduction**

**“I. INTRODUCTION**

1. At the 118th Ministerial Session, the Ministers reaffirmed the importance of the principle of the rule of law for consolidating democracy and respect for human rights and asked their Deputies to examine how full use could be made of the Council of Europe’s potential in promoting the rule of law and good governance and to report to them on the occasion of the handover of the Committee of Ministers Chair from Sweden to Spain in November 2008 (Document CM(2008)47 final). At their 1027th meeting on 21 May 2008, the Deputies invited their Rapporteur Group on Legal Co-operation (GR-J) to examine this matter. At its meeting on 1 July 2008, the GR-J held a first discussion on the item “Examination of how full use can be made of the Council of Europe’s potential in enhancing the rule of law”. This discussion took place on the basis of a document submitted by the Swedish delegation (DD(2008)393) proposing the development of a Council of Europe strategy to reinforce the promotion of the rule of law.

2. The GR-J requested the Secretariat to prepare a descriptive document seeking to define key components of the concept of rule of law and draw up a typology of activities undertaken by the Council of Europe relevant to the rule of law, notably standard-setting and co-operation activities. The document should also contain information about relevant activities of the EU and other international organisations.

3. This document was prepared in response to the GR-J’s request.”

---

<sup>9</sup> Document presented at the 1042bis meeting of the Ministers’ Deputies on 27 November 2008. See document : CM(2008)170E / 21 November 2008

### **3.c “The principle of the Rule of Law”**

#### ***3.c.i Parliamentary Assembly Resolution 1594 (2007)<sup>10</sup> on “The principle of the rule of law”***

1. The notion of “rule of law”, conceived by European nations as a common value and fundamental principle for greater unity, was recognised in the Statute of the Council of Europe of 1949 (ETS No. 1). This principle, together with those of democracy and human rights, plays a significant role today in the Council of Europe and the case law of the European Court of Human Rights in particular.

2. The European Union, the Organization for Security and Co-operation in Europe (OSCE) and their member states are also committed to the principles of the “rule of law”, democracy and human rights. Explicit reference to the “rule of law” can be found, *inter alia*, in European Union/European Community treaties, the case law of the European Court of Justice, as well as in the Copenhagen criteria of 1993 for accession to the European Union.

3. Despite a general commitment to this principle, the variability in terminology and understanding of the term, both within the Council of Europe and in its member states, has elicited confusion. In particular, the French expression *Etat de droit* (being perhaps the translation of the term *Rechtsstaat* known in the German legal tradition and in many others) has often been used but does not always reflect the English language notion of “rule of law” as adequately as the expression *prééminence du droit*, which is reflected in the French version of the Statute of the Council of Europe, in the preamble to the European Convention on Human Rights (ETS No. 5) and in the Strasbourg Court’s case law.

4. The Parliamentary Assembly draws attention to the fact that in some recent democracies in eastern Europe, the main trends in legal thinking foster an understanding of the “rule of law” as “supremacy of statute law”, in Russian *verkhovensto zakona*. “Rule of law” should, however, be translated into Russian as *verkhovensto prava*, just as “rule of law” is correctly translated into French as *prééminence du droit* and not as *prééminence de la loi*. (Similarly the words *Recht* and *droit* in *Rechtsstaat/Etat de droit* should be translated into Russian as *prava*.) Translating “rule of law” as *verkhovensto zakona* gives rise to great concern, since in some of these countries certain traditions of the totalitarian state, contrary to the “rule of law”, are still present both in theory and in practice. Such a formalistic interpretation of the terms “rule of law” and *Etat de droit* (as well as of *Rechtsstaat*) runs contrary to the essence of both “rule of law” and *prééminence du droit*. Certainly in these cases there is an inappropriate lack of consistency and clarity when translating into the legal terms used in member states.

5. The Assembly emphasises the need to ensure the unification that encompasses the principles of legality and of due process, which has the same basic elements, found in particular in the case law of the European Court of Human Rights, by whatever name this concept is now used in the Council of Europe.

6. Consequently, the Assembly:

6.1. stresses that the terms “rule of law” and *prééminence du droit* are substantive legal concepts which are synonymous, and which should be considered as such in all English and French language versions of documents issued by the Assembly as well as in the member states in their official translations;

---

<sup>10</sup> Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 November 2007 (see Doc. 11343, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).

6.2. believes that the subject merits further reflection with the assistance of the European Commission for Democracy through Law (Venice Commission).

### **3.c.ii Report on “The principle of the rule of law”<sup>11</sup>**

#### *Summary*

The notion of Rule of Law (*prééminence du droit*), together with those of pluralistic democracy and human rights, represents a fundamental principle and a common European value recognised in, inter alia, in the Statute of the Council of Europe and the case law of the European Court of Human Rights.

The meaning of this notion, especially in certain states of the former Soviet Union, has been deformed and inappropriately understood to mean “state based on the principle of the supremacy of the laws” (written rules), in French “*prééminence des lois*” (i.e., not “*du droit*”). Such a formalistic interpretation of the term “*Etat de droit*” runs contrary to the essence of Rule of Law/*prééminence du droit*.

The terms Rule of Law and “*prééminence du droit*” should be used consistently by the Assembly in order to avoid confusion. This subject merits further reflection with the Venice Commission.

---

<sup>11</sup> See Doc. 11343, report of the Committee on Legal Affairs and Human Rights, rapporteur : Mr. Jurgens.