

**OPINION OF THE CAHDI ON THE PARLIAMENTARY ASSEMBLY  
RECOMMENDATION 1458 (2000) TOWARDS A UNIFORM INTERPRETATION OF  
COUNCIL OF EUROPE CONVENTIONS: CREATION OF A GENERAL JUDICIAL  
AUTHORITY**

The *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) held its 20th meeting in Strasbourg, 12-13 September 2000. The agenda included an item entitled "Proposal for the setting up of a General Judicial Authority of the Council of Europe". The CAHDI decided to consider this proposal submitted by the Czech Republic to the Committee of Ministers at its own initiative.

In the framework of this item and pursuant to the Committee of Ministers' decision No. CM/751/26042000 (707<sup>th</sup> meeting – Strasbourg, 26 April 2000), the CAHDI was also asked to give an opinion on the Council of Europe's Parliamentary Assembly Recommendation 1458 (2000) *Towards A Uniform Interpretation of Council of Europe Conventions: Creation of a General Judicial Authority*.

In its recommendation, the Parliamentary Assembly of the Council of Europe supports the Czech proposal for the setting up of a "general judicial authority" of the Council of Europe and recommends that the Committee of Ministers set up such an authority, 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 Parliamentary Assembly recommends that such an authority should have the following competencies: 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, 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, and 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.

The CAHDI was advised by the Czech delegation about the underlying reasons for the proposal which are both legal and political and try to respond to a real need, i.e.: to ensure the uniform interpretation of Council of Europe international instruments, in view of the fact that very few of them provide for a control mechanism. In this perspective, the Czech delegation understood that there were two basic options in order to implement the recommendation: to empower a newly created authority or to extend the competencies of an existing body such as the European Court of Human Rights and supported the second one.

The CAHDI held an exchange of views on the Parliamentary Assembly recommendation to the extent possible within the time available, and concentrated, in accordance with its terms of reference and its role in the Council of Europe intergovernmental structure, on what it understood to be the public international law issues connected with the Parliamentary Assembly Recommendation.

From the onset, the CAHDI considered that the implementation of the Parliamentary Assembly Recommendation would change the very way in which the Council of Europe has operated until now.

The CAHDI, having conducted a debate on this issue, concluded that it would not be possible to deliver a single opinion on behalf of the Committee as a whole. Instead it decided to provide a summary of arguments for and against the implementation of the Parliamentary Assembly Recommendation which were submitted by delegations.

### Arguments in favour

Since the 1960s three recommendations of the Parliamentary Assembly, as well as the report of the Wise Persons Committee have supported the search for a means of ensuring the uniform interpretation of Council of Europe international instruments, in view of the fact that very few of them provide for a control mechanism solution to such a situation. Parliamentary Assembly Recommendation 1458 (2000) now provides the political support on the part of parliamentarians to move forward in that direction.

Article 3 of the Statute of the Council of Europe provides that "Every member of the Council of Europe must accept the principles of the rule of law". The rule of law implies the existence of a jurisdiction to guarantee uniform interpretation of law.

In as far as Council of Europe conventions are concerned, the setting up of such a general judicial authority as suggested by the Parliamentary Assembly, would guarantee a uniform interpretation.

The European Court of Human Rights could ensure these functions given its prestige and authority and the fact that it regularly applies public international law. Moreover, this solution would have low cost and a limited impact on the Court's workload.

Finally, the implementation of Parliamentary Assembly Recommendation 1458 (2000) would contribute in increasing the visibility of the Organisation as a whole.

### Arguments against

Council of Europe conventions are very diverse regarding their substance and autonomous regarding their contracting parties and supervisory mechanisms. Therefore, they hardly represent a uniform and coherent body of international law. Some conventions make provision for committees which consider questions arising from the application of these texts, including interpretation. Although they may not be judicial in nature, they have operated well and have brought in the flexibility which is inherent to the system of international law. Other conventions expressly do not provide for such control or interpretation mechanism and form part of the general system of international law. States may have become parties to these conventions precisely because of this character which should be preserved. Where the establishment of a mechanism for judicial interpretation of a particular convention was required, it was always possible to conclude an appropriate protocol to the convention in question.

The creation of a new general judicial authority would require significant resources.

In addition, it would contribute further to the proliferation of international judicial authorities and to the fragmentation of international law which would be highly

undesirable. It is not justified in as far as the Council of Europe already has a Convention for the Peaceful Settlement of Disputes to which States may become parties. In addition, the International Court of Justice could solve disputes arising from the application or interpretation of Council of Europe conventions.

The allocation of new competences to an already existing body, such as the European Court of Human Rights, would also raise legal and practical problems. The Court forms part of a legal system which has its own justification. Pursuant to its new role, the Court would be compelled to give opinions on a variety of issues, some of which lying far beyond its traditional field of expertise. As far as the workload is concerned, it is far from certain that the allocation of new competencies to the Court would not entail an excessive increase in the Court's workload at the cost of efficiency in performing its primary tasks. Moreover, if it only entailed a minor increase in work, the question would arise about the usefulness of the new role altogether.

Moreover, it should be noted that the European Community is party to some Council of Europe conventions. The setting up of a general judicial authority could conflict with the competencies of the Court of Justice of the European Communities in this respect.

Finally, it should be noted that paragraph 9, i) of the Parliamentary Assembly Recommendation provides that a general judicial authority should have the competence to give binding opinions on the interpretation and application of Council of Europe conventions at the request of one or several member states. However, it is not indicated whether this or these member States have to be party to the convention in question and this raises a delicate question.

### Conclusions

The CAHDI concluded that at present time, the reluctance on the part of a significant number of States is too high for the Parliamentary Assembly Recommendation to be pursued in whatever form. The CAHDI therefore suggests reverting to consideration of this issue in the future when appropriate conditions are met.

Moreover, the CAHDI, inspired by the Czech proposal and the Parliamentary Assembly Recommendation, suggests that the question of interpretation be considered for future conventions to be concluded in the framework of the Council of Europe and that, where appropriate, suitable means for interpretation be provided for.