

**OPINION OF THE COMMITTEE OF LEGAL ADVISERS
ON PUBLIC INTERNATIONAL LAW (CAHDI)
ON THE REQUEST OF THE STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)
FOR THE INTRODUCTION OF A SIMPLIFIED PROCEDURE FOR AMENDMENT OF
CERTAIN PROVISIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

1. On 22 June 2011, the Steering Committee for Human Rights (CDDH) addressed a request to the Committee of Legal Advisers on Public International Law (CAHDI) for an opinion on the introduction of a simplified procedure for the amendment of certain provisions of the European Convention on Human Rights (ECHR).

2. In particular, the CDDH wished to obtain the opinion of the CAHDI on the compatibility, with public international law and the national law of the Member States, of the adoption of a Statute of the Court containing certain provisions of the ECHR, as well as other items which do not currently appear in the Convention.

3. During this exchange of views, the delegations examined the main questions posed by the introduction of a simplified procedure for amendment.

4. The first question was that of the legal procedures which would make it possible to introduce the simplified procedure of amendment

- One solution would be to introduce to the Convention a provision establishing the simplified procedure for amendment and mentioning the provisions of the ECHR which are covered by the procedure. This solution would require the adoption of a Protocol of Amendment to the Convention, which would have to be ratified by the Member States.

- Another solution would be to adopt a Statute of the Court containing a final provision establishing the simplified procedure for amendment. This Statute would include provisions withdrawn beforehand from the Convention, in addition to new provisions. This solution would also require the adoption of a Protocol of Amendment to the Convention, which would have to be the subject of a ratification procedure by the Member States.

Thus, whatever the chosen solution, the delegations highlighted the need to proceed by means of a Protocol of Amendment to the Convention, which would have the status of an international agreement and be the subject, in each Member State, of a ratification procedure in accordance with the rules of internal law.

5. The second question concerned the simplified procedure for amendment in its own right.

- With regard to the nature of the provisions likely to be amended by means of the simplified procedure, it is necessary to limit them to ensure that the procedure is compatible with the constitutional requirements of the Member States. Thus, only provisions relating to organisational questions and without any impact on the rights and

obligations of States and applicants should be included and presented in a clear and exhaustive list. This is the condition for it to be possible to implement the simplified procedure for amendment without it being necessary for States to apply the ratification procedure, requiring parliamentary authorisation, for each amendment.

Thus, by way of example, Article 35 of the Convention on the exhaustion of all domestic remedies is a provision which could not be subject to amendment by means of a simplified procedure, as modification of the Article would have consequences for the rights and obligations of applicants. However, a provision such as paragraph 2 of Article 24, which provides that the Court should be assisted by rapporteurs, is essentially organisational and could therefore be the subject of a simplified procedure.

- In terms of the choice of a simplified procedure for amendment, it is clear that unanimous adoption of amendments would be more acceptable than a qualified or non-qualified majority for certain Member States, given their constitutional requirements. This adoption could be express or tacit, using an "opt-out" procedure (six-month period, for example, in which to object to the adoption of an amendment, at the end of which, in the absence of any objection, the amendment would come into force for all Member States).

6. Lastly, the CAHDI delegations insisted on the fact that these replies in no way prejudice the need or not, for certain Member States, to transcribe the provisions thus adopted into national law.

7. As things stand, the delegations considered themselves unable to conduct a more in-depth analysis of the question. Only in the light of a given draft proposal, transmitted to the CAHDI by the Committee of Ministers, could a more precise opinion be formulated.