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COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)

List of items discussed and decisions taken Abridged Report

55th meeting
Strasbourg (France), 22-23 mars 2018

Public International Law and Treaty Office Division
Directorate of Legal Advice and Public International Law, DLAPIL

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List of items discussed and decisions taken Abridged Report

1. The Committee of Legal Advisers on Public International Law (CAHDI) held its 55th meeting in Strasbourg (France) on 22-23 March 2018 with Ms Päivi KAUKORANTA (Finland) as Chair.
2. The CAHDI adopted its agenda as set out in **Appendix I** to the present report.
3. The CAHDI examined the Report of its 54th meeting (Strasbourg, 21-22 September 2017).
4. The CAHDI took note of the information provided by the Director of Legal Advice and Public International Law on the **recent developments within the Council of Europe** since the last meeting of the Committee.
5. The CAHDI took note of the adoption of its **Terms of Reference for 2018-2019** by the Committee of Ministers on 21-23 November 2017 at the 1300th (Budget) meeting of the Ministers' Deputies. The CAHDI furthermore took note of the **decisions of the Committee of Ministers relevant to its work**. Following the decision of 7 February 2018 of the Committee of Ministers communicating to the CAHDI *Recommendation 2122 (2018) of the Parliamentary Assembly of the Council of Europe – "Jurisdictional Immunity of International Organisations and Rights of their Staff"* for information and possible comments, the CAHDI adopted its opinion on this Recommendation as set out in **Appendix II** to the present report.
6.
 - a. Concerning the subject of "**Immunities of States and international organisations**", the CAHDI held an exchange of views on the issue of the "Settlement of disputes of a private character to which an international organisation is a party". It took note of the written comments submitted by 18 delegations – namely Albania, Andorra, Armenia, Austria, Belarus, Canada, the Czech Republic, Denmark, Germany, Greece, Hungary, Israel, Mexico, Serbia, Slovenia, Spain, Switzerland and the United Kingdom – to the questions contained in the introductory document prepared by the Netherlands on this issue, and, invited also other delegations to reply in writing to these questions.
 - b. The CAHDI furthermore addressed the issue of the "Immunity of State owned cultural property on loan" and examined in this regard the replies submitted by 24 delegations – namely Albania, Andorra, Austria, Armenia, Belarus, Belgium, Canada, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Mexico, the Netherlands, Norway, Romania, Switzerland, the United Kingdom and the United States of America – to the questionnaire prepared on this topic.

On this issue, the CAHDI took note that the delegations of the Czech Republic and Austria encouraged delegations which had not yet done so to consider signing the "Declaration on Jurisdictional Immunities of State Owned Cultural Property" which to date (23 March 2018) had been signed by the Ministers of Foreign Affairs of 20 States (Albania, Armenia, Austria, Belarus, Belgium, the Czech Republic, Estonia, Finland, France, Georgia, Holy See, Hungary, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, the Russian Federation and the Slovak Republic). This Declaration had been drafted in support of the recognition of the customary nature of the pertinent provisions of the 2004 *United Nations Convention on Jurisdictional Immunities of States and Their Property* in order to guarantee the immunity of State cultural property on loan. The Committee noted that the Secretariat of the CAHDI performed the functions of "depository" of this Declaration and that the text of this Declaration was available on the website of the CAHDI.

- c. The CAHDI also addressed the issue of the "Immunities of special missions" and examined in this regard the replies submitted by 36 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia,

Finland, France, Georgia, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Malta, Mexico, the Republic of Moldova, the Netherlands, Norway, Romania, Serbia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI welcomed that **Sir Michael WOOD**, member of the United Nations International Law Commission (ILC) and former Chair of the CAHDI, agreed to prepare an analytical report on legislation and practice of member States of the Council of Europe and other States and international organisations participating in the CAHDI concerning “Immunities of Special Missions”, including the main trends arising from the replies to the questionnaire prepared by the CAHDI on this matter. The CAHDI noted that all replies are at present public replies and will be included, in their present form, in the forthcoming CAHDI publication. In this respect, the CAHDI further welcomed the fact that a contract between the Council of Europe and Brill-Nijhoff Publishers for the publication of this new CAHDI book has already been concluded by the Secretariat. The CAHDI encouraged delegations which had not yet done so to submit their contribution to the questionnaire in order to include them in this future new CAHDI book.

d. The CAHDI furthermore addressed the issue of “Service of process on a foreign State” and examined in this regard the replies submitted by 30 delegations (Albania, Andorra, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Latvia, Mexico, the Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, Spain, Switzerland, the United Kingdom and the United States of America) to the questionnaire prepared on this topic. The CAHDI encouraged delegations which had not yet done so, to submit or update their contribution to the questionnaire in order to prepare an analysis outlining the main trends arising from these replies.

e. The CAHDI took note that since its last meeting no State represented in the Committee had signed, ratified, accepted, approved or acceded to the United Nations Convention on Jurisdictional Immunities of States and Their Property.

f. With regard to its Database on “State practice regarding State Immunities”, the CAHDI noted that to date (23 March 2018), 35 States (Andorra, Armenia, Austria, Belgium, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom) and one organisation (European Union) had submitted a contribution to this database.

The CAHDI furthermore considered national practices and case-law regarding immunities of States and international organisations on the basis of information provided by delegations and invited delegations to submit or update their contributions to the relevant CAHDI database.

g. The CAHDI pursued its exchange of views on the Possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States’ or international organisations’ immunities.

The CAHDI noted that to date (23 March 2018), 30 delegations (Albania, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Mexico, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden and the United States of America) had replied to the questionnaire on this matter. The CAHDI invited delegations which had not yet done so to submit or update their replies to the questionnaire.

7. Regarding the revised questionnaire on the “**Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs**” which contains additional questions on gender equality following the recommendations contained in the “*Council of Europe Gender Equality Strategy 2014-2017*”, the CAHDI examined the replies submitted by 38 delegations (Albania, Andorra, Armenia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Israel, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Republic of Moldova, Montenegro, Norway,

Romania, Serbia, Slovenia, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America and NATO) to this revised questionnaire. 14 further delegations (Azerbaijan, Bulgaria, Iceland, Ireland, Japan, the Netherlands, Poland, Portugal, the Russian Federation, the Slovak Republic, Spain, “the former Yugoslav Republic of Macedonia”, Ukraine and Interpol) have replied to the original questionnaire. The CAHDI invited delegations to send to the Secretariat any further information in order to complete their replies.

8. With regard to the issue of “**National implementation measures of UN sanctions and respect for human rights**”, the CAHDI took note of the information regarding cases that had been submitted to national tribunals by persons or entities included in or removed from the lists established by the United Nations Security Council Sanctions Committees.

9. a. The CAHDI welcomed the presentation on the current work of the *Drafting Group on the place of the European Convention on Human Rights in the European and International Legal Order* (DH-SYSC-II) by the **special guest Ms Florence Merloz**, Chair of the DH-SYSC-II and held an exchange of views on specific subjects of particular interest to the CAHDI.

b. The CAHDI took note of information provided by the delegations on cases brought before the **European Court of Human Rights** involving issues of public international law.

10. The CAHDI held an exchange of views on issues relating to the **peaceful settlement of disputes**, in particular, concerning the different clauses of attribution of the jurisdiction of the International Court of Justice (ICJ), the case law of the International Tribunal of the Law of the Sea (ITLOS), the inter-States arbitration cases and any other relevant cases of peaceful settlement of disputes between States. The CAHDI further agreed to examine all these different issues in its future meetings under this item of the agenda.

11. Within the framework of its activity as the **European Observatory of Reservations to International Treaties**, the CAHDI examined a list of 19 reservations and declarations to international treaties subject to objection.

In addition, the CAHDI took note of the reactions to reservations and declarations to international treaties previously examined by the CAHDI and for which the deadline for objection had already expired. It invited delegations to submit to the Secretariat any information relevant for the update of the summary table as set out in document *CAHDI (2018) 12 Addendum prov confidential bilingual*.

12. The CAHDI welcomed the presentation on the recent developments at the Court of Justice of the European Union (CJEU) by the **special guest Mr Allan Rosas**, Judge of the CJEU. In this context, the CAHDI held an exchange of views on the activities and case law of the CJEU.

13. With regard to the **consideration of current issues of international humanitarian law**, the CAHDI took note of the information provided by delegations.

14. The CAHDI took note of the **recent developments concerning the International Criminal Court (ICC) and other international criminal tribunals**.

15. With regard to the examination of **topical issues of international law**, the CAHDI took note of the comments made by delegations.

16. The CAHDI decided to hold its **56th meeting** in Helsinki (Finland), on 20-21 September 2018. The CAHDI instructed the Secretariat, in liaison with the Chair of the CAHDI, to prepare in due course the provisional agenda of this meeting.

17. The CAHDI adopted the present Abridged Report and instructed the Secretariat to submit it to the Committee of Ministers for information.

APPENDIX I**AGENDA****I. INTRODUCTION**

1. **Opening of the meeting by the Chair**
2. **Adoption of the agenda**
3. **Adoption of the report of the 54th meeting**
4. **Information provided by the Secretariat of the Council of Europe**

II. ONGOING ACTIVITIES OF THE CAHDI

5. **Committee of Ministers' decisions and activities of relevance to the CAHDI's activities, including requests for CAHDI's opinion**
6. **Immunities of States and international organisations**
 - a. *Topical issues related to immunities of States and international organisations*
 - Settlement of disputes of a private character to which an international organisation is a party
 - Immunity of State owned cultural property on loan
 - Immunities of special missions
 - Service of process on a foreign State
 - b. *UN Convention on Jurisdictional Immunities of States and Their Property*
 - c. *State practice, case-law and updates of the website entries*
7. **Organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affairs**
8. **National implementation measures of UN sanctions and respect for Human Rights**
9. **European Convention on Human Rights**
 - Exchange of views with Ms Florence MERLOZ, Chair of the *Drafting Group on the place of the European Convention on Human Rights in the European and International Legal Order* (DH-SYSC-II)
 - Cases before the European Court of Human Rights involving issues of public international law
10. **Peaceful settlement of disputes**
11. **Law and practice relating to reservations and interpretative declarations concerning international treaties: European Observatory of Reservations to International Treaties**
 - List of reservations and declarations to international treaties subject to objection

III. GENERAL ISSUES OF PUBLIC INTERNATIONAL LAW

- 12. Exchange of views with Mr Allan ROSAS, Judge of the Court of Justice of the European Union (CJEU)**
- 13. Consideration of current issues of international humanitarian law**
- 14. Developments concerning the International Criminal Court (ICC) and other international criminal tribunals**
- 15. Topical issues of international law**

IV. OTHER

- 16. Place, date and agenda of the 56th meeting of the CAHDI: Finland, 20-21 September 2018**
- 17. Any other business**
- 18. Adoption of the Abridged Report and closing of the 55th meeting**

APPENDIX II

OPINION OF THE CAHDI

on Recommendation 2122 (2018) of the Parliamentary Assembly of the Council of Europe – “Jurisdictional Immunity of International Organisations and Rights of their Staff”

1. On 7 February 2018, the Ministers’ Deputies at their 1306th meeting agreed to communicate *Recommendation 2122 (2018) of the Parliamentary Assembly of the Council of Europe (PACE)* on “*Jurisdictional Immunity of International Organisations and Rights of their Staff*” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by the end of March 2018¹.

2. The CAHDI examined the above-mentioned Recommendation at its 55th meeting (Strasbourg, France, 22-23 March 2018) and made the following comments concerning those aspects of Recommendation 2122 (2018) of particular relevance to the Terms of Reference of the CAHDI.

3. From the outset, the CAHDI thanked the PACE for acknowledging its work in relation to the subject of the “Jurisdictional immunity of international organisations”. In this respect, the CAHDI pointed out that the theme of “Immunity of States and International Organisations” is currently on the agenda of all its meetings as a permanent item. Indeed, the issue of State immunity – sometimes also known as “jurisdictional immunity”²- has been examined by the CAHDI from very early on of its existence in 1991 through its assessments of the implementation of the 1972 *European Convention on State Immunity* (ETS No.74) and afterwards through its *Pilot Project regarding State Immunities* which led to the CAHDI publication on “*State Practice Regarding State Immunities*” by Martinus Nijhoff in 2006.

4. During its 37th meeting in 2009, the CAHDI agreed to enlarge this topic to international organisations in order to discuss and examine the activities and actions of international organisations covered by jurisdictional immunity. The question of the **settlement of disputes of a private character to which an international organisation is a party** was later included in the agenda of the CAHDI at its 47th meeting in March 2014 at the request of the Dutch delegation. When examining this issue, the CAHDI points out that indeed the privileges and immunities of international organisations serve the legitimate purpose of protecting the independence of international organisations, which is crucial for the effective performance of their functions. In general terms, the European Court of Human Rights (ECtHR) stated that “it does not follow, however, that in the absence of an alternative remedy the recognition of immunity is ipso facto constitutive of a violation of the right of access to a court”³. The immunity of international organisations may prevent individuals who have suffered harm (third-party claims for personal injury or death or property loss or damage) because of the conduct of an international organisation from bringing a successful claim before a domestic court. Furthermore, the CAHDI noted that this immunity has been increasingly challenged based on an alleged incompatibility of upholding immunity with the right of access to court. The existence of an alternative remedy provided to the claimant by the international organisation is important in this context.

5. Concerning the issue of the settlement of third-parties claims, the CAHDI pointed out – for illustrative purposes – some recent events mainly in relation to peacekeeping operations of the

¹ The Ministers’ Deputies specifically indicated in their decision that they “agreed to communicate it [Recommendation 2122 (2018)] to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 21 March 2018. However, taking into account that the 55th meeting of the CAHDI took place on 22 and 23 March, it was agreed to send the CAHDI opinion to the Secretariat of the Committee of Ministers on 26 March 2018.

This PACE Recommendation 2122 has also been communicated to the Steering Committee for Human Rights (CDDH) for information and possible comments and to the Administrative Tribunal for opinion.

² See explanations on this terminology made by Mr Peter Tomka in his paper “Pilot Project of the Council of Europe on State Practice Regarding State Immunities” in *The CAHDI Contribution to the Development of Public International Law* (Brill Nijhoff 2016), Edited by the Council of Europe, pp.23-39.

³ ECtHR, *Stichting Mothers of Srebrenica and others v. the Netherlands*, no. 65542/12, decision of 11 June 2013, para. 164.

United Nations (UN)⁴ and some case-law of the ECtHR involving international organisations where their immunity from the civil jurisdiction of domestic courts had been upheld. Some CAHDI delegations acknowledged that there has been, for a long period, a gap in the judicial protection of the rights of individuals in some cases involving international organisations before national courts. Nevertheless, they also pointed out that progress has been achieved and that there is not one uniform solution for all international organisations and for all activities carried out by those organisations⁵.

6. The CAHDI underlines that the legal issues arising from the PACE **Recommendation 2122**, and PACE **Resolution 2206** associated with it, are very similar to those described above. Nevertheless, the CAHDI points out that while in both cases the immunity of international organisations before domestic courts may have an impact on the judicial protection of the rights of the individuals concerned, the legal position of the latter is not always the same, since, the staff of international organisations usually have access to an internal dispute settlement procedure developed by the international organisation as an alternative means of judicial protection while third parties who have suffered harm as a result of an unlawful conduct of the organisation involved do not have any judicial protection if the immunity of the international organisation is not waived. As mentioned by the PACE, the CAHDI points out that indeed due to the privileges and immunities of international organisations, international civil servants normally have no recourse to national courts regarding employment related matters. Furthermore, the CAHDI agrees with the PACE that against the background of the Council of Europe's responsibility for setting international human rights standards and promoting the rule of law at all levels, the Organisation has a special duty to offer its staff timely, effective and fair justice. Nevertheless, the CAHDI underlines that in conformity with the **case law of the ECtHR** the key factor in determining whether granting international organisations immunity from jurisdiction of the national courts is permissible under the *European Convention on Human Rights* (ECHR) is whether the applicants concerned had available to them "**reasonable alternative means**" to effectively protect their rights under the ECHR⁶. An increasing number of agreements on privileges and immunities contain an explicit obligation for international organisations to provide alternative means of private dispute settlement. The PACE in paragraph 1.1.1 of its Recommendation 2122 made reference indeed to these "reasonable alternative means of legal protection" which should be accessible in the event of disputes between international organisations and their staff.

7. In the framework of the **Council of Europe**⁷, the CAHDI notes that the rights, obligations and alternative means – to access to national courts – for the legal protection of the staff of the Organisation are set out in the [Council of Europe Staff Regulations](#)⁸. As it is mentioned in the Preamble of the *Staff Regulations* "*The Council of Europe, in its day-to-day functioning, shall respect all the principles and ideals which the Organisation defends. In particular, in the administration of the Secretariat, the Secretary General shall endeavour to realise the conditions which will ensure the effective application of the rights and principles set out in the revised European Social Charter, in so far as these are applicable to an international organisation*". The CAHDI further notes that the settlement of disputes which may arise between the Council of Europe and its staff is governed by "*PART VII: Disputes*" of the *Staff Regulations*. The Council of Europe has the following system for

⁴ In October 2013, Haiti Cholera victims filed a class action lawsuit in the Southern District of New York against the UN. The judgment of the Southern District Court of New York handed down on 9 January 2015 concluded that the UN was immune from the plaintiffs' suit. An appeal was lodged on 12 February 2015 before the United States Court of Appeals for the Second Circuit. The oral arguments were heard on 1 March 2016. In its judgment of 18 August 2016, the United States Court of Appeals for the Second Circuit upheld the immunity of the United Nations.

⁵ See CAHDI Meeting Reports from the 52nd, 53rd and 54th meetings (docs. CAHDI (2016)23; CAHDI (2017)14 and CAHDI (2017) 23).

⁶ ECHR, *Beer and Regan v. Germany*, no. 28934/95, Grand Chamber judgment of 18 February 1999; ECHR, *Waite and Kennedy v. Germany*, no. 26083/94, Grand Chamber judgment of 18 February 1999; ECHR, *Chapman v. Belgium*, no. 39619/06, decision of 5 March 2013; ECHR, *Stichting Mothers of Srebrenica and others v. the Netherlands*, no. 65542/12, decision of 11 June 2013.

⁷ The privileges and immunities enjoyed by the Council of Europe are governed by Article 40 of the *Statute of the Council of Europe*, as further elaborated under the *General Agreement on Privileges and Immunities of the Council of Europe* (GAPI) and its *Protocol*.

⁸ The *Staff Regulations and its Appendices* were adopted by Resolution Res(81)20 of the Committee of Ministers on 25 September 1981, with the exception of Appendix VIII, which was adopted by Resolution Res(83)12 of 15 September 1983. The Committee of Ministers regularly updates the *Staff Regulations*.

resolving employment disputes: a “Complaints procedure” (Article 59⁹ of *Staff Regulations*) and an “Appeals procedure” (Article 60¹⁰ of *Staff Regulations*). The administrative complaint is submitted to the Secretary General through the Director of Human Resources and it may be referred to an “Advisory Committee on Disputes”¹¹. In the event of either explicit rejection in whole or in part, or implicit rejection of this complaint, the complainant may appeal, under Article 60 of the *Staff Regulations*, to the Administrative Tribunal set up by the Committee of Ministers. The [Statute of the Administrative Tribunal](#) is contained in *Appendix XI* of the *Staff Regulations*.

8. The CAHDI also notes that **the jurisdiction of the Administrative Tribunal of the Council of Europe** was extended to officials of the *Central Commission for the Navigation of the Rhine* (CCNR) by Agreement on 16 December 2014 as well as to officials of *The Hague Conference on Private International Law* by Agreement on 24 November 2017 and to officials of the *Intergovernmental Organisation for International carriage by Rail* (OTIF) by Agreement on 8 December 2017.

9. As mentioned in the [Explanatory Memorandum prepared by the PACE Rapporteur Mr Volker Ullrich](#)¹² for the elaboration of Recommendation 2122 and Resolution 2206, there is a large variety and types of competent bodies for labour disputes within international organisations. The CAHDI recalls that the United Nations, for instance, has a two tier system for resolving employment disputes: the UN Disputes Tribunal (UNDT) and the UN Appeals Tribunal (UNAT). International institutions such as the Organisation for Economic Co-operation and Development (OECD) and the North Atlantic Treaty Organisation (NATO) have set up their own administrative tribunals. Others administrative tribunals have competence to hear complaints from other organisations as it is the case of the International Labour Organisation (ILO) Administrative Tribunal whose jurisdiction has been recognised by over 60 organisations and entities. In this respect, the CAHDI recalls that the International Labour Organisation Administrative Tribunal (ILOAT) in its Judgment No. 3127 stated that “The right to an internal appeal is a safeguard which international civil servants enjoy in addition to their right of appeal to a judicial authority. Thus, except in cases where the staff member concerned forgoes the lodging of an internal appeal, an official should not in principle be denied the possibility of having the decision which he or she challenges effectively reviewed by the competent appeal body”¹³. As mentioned in the previous paragraph, the Administrative Tribunal of the Council of Europe has also extended its jurisdiction to officials from other international organisations.

10. Concerning the reference contained in paragraph 1.4.1 of the PACE Recommendation 2122 on the **right of access of trade unions** to administrative tribunals of international organisations, the CAHDI refers to the case of *SUEPO and Others v. the European Patent Organisation “EPO”*¹⁴, where the Dutch Supreme Court held in its judgement of 20 January 2017, quashing the previous judgments in the case by the interim relief judge and The Hague Appeal Court, that EPO was entitled

⁹ **Article 59 of Staff Regulations:** “1. Staff members may submit to the Secretary General a request inviting him or her to take a decision or measure which s/he is required to take relating to them. If the Secretary General has not replied within sixty days to the staff member’s request, such silence shall be deemed an implicit decision rejecting the request. The request must be made in writing and lodged via the Director of Human Resources. The sixty-day period shall run from the date of receipt of the request by the Secretariat, which shall acknowledge receipt thereof.

2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression “administrative act” shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General.” [...].

¹⁰ **Article 60 of the Staff Regulations:** “In the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59, the complainant may appeal to the Administrative Tribunal set up by the Committee of Ministers”.

¹¹ **Article 59 paragraph 6 of the Staff Regulations:** “The Advisory Committee on Disputes shall comprise four staff members, two of whom shall be appointed by the Secretary General and two elected by the staff under the same conditions as those for the election of the Staff Committee. The committee shall be completely independent in the discharge of its duties. It shall formulate an opinion based on considerations of law and any other relevant matters after consulting the persons concerned where necessary. The Secretary General shall, by means of a rule, lay down the rules of procedure of the committee.”

¹² Report by the PACE Committee on Legal Affairs and Human Rights on “Jurisdictional immunity of international organisations and rights of their staff”, Doc 14443, 29 November 2017.

¹³ ILOAT, Judgment No. 3127, 113th Session, 2012, *V.C. v. Centre for the Development of Enterprise*, para. 13.

¹⁴ Hoge Raad, *SUEPO and Others v. the European Patent Organisation (“EPO”)*, judgment of 20 January 2017, ECLI:NL:HR:2017:57.

to invoke its immunity from jurisdiction in a dispute with two trade unions. The Dutch Supreme Court applied the test developed by the ECtHR in its jurisprudence (on the acceptability of granting jurisdictional immunity to international organisations thus limiting the right of access to a court under Article 6 of the ECHR provided that litigants had a reasonable alternative means of protecting their rights) concluding that litigants had a reasonable alternative means of protecting their rights effectively; trade unions were sufficiently protected by the internal dispute settlement procedure provided for by EPO under which individual employees and staff representatives could ultimately take their complaint to the ILO Administrative Tribunal. According to the Dutch Supreme Court, this meant that the essence of their right of access to a court had not been impaired.

11. Concerning points 1.4.1 and 1.4.2 of the Recommendation and with reference to what has been said in paragraphs 7, 9 and 10 above and, without wanting to comment on the rightness of these recommendations, the CAHDI draws the attention of the Committee of Ministers to the fact that, should it deem appropriate to start a reflection on this subject, this would imply changes to the Statute of the Administrative Tribunal Council of Europe (in particular to articles 10 and 12) and would have budgetary and administrative consequences.

12. The CAHDI has further examined, during its meetings, the issue of striking a balance between upholding the immunity of international organisations and the rights of their staff when a labour or employment dispute arises. For instance, in a case involving the immunity of EPO¹⁵, the ECtHR held that, with regards to the complaint about the lack of access to courts and the allegedly deficient procedures within the EPO and the Administrative Tribunal of the ILO, the availability of an arbitration procedure constituted a reasonable alternative means to have the complaint examined in substance and consequently the applicant's protection of fundamental rights had not been manifestly deficient. Similarly, in another case examined by the CAHDI¹⁶, the Court of Appeals of Brussels held that an arbitration clause contained in a service contract between the claimant and NATO guaranteed the right of access to a court pursuant to Article 6 of the ECHR.

13. Taking into account the above mentioned considerations, the CAHDI reiterates that in general in accordance with national and international case law, the immunity of international organisations is consistent with the right to a fair trial (Article 6 ECHR) but the protection awarded to the individuals is to be proportional and to constitute a "reasonable alternative means" of dispute settlement. Furthermore, the existence of administrative tribunals has been found in principle to meet the human rights standards established under the ECHR¹⁷ and the reason not to insist on the review by national courts of decisions by administrative tribunals.

14. The CAHDI further reiterates that the issue of privileges and immunities of international organisations and the rights of their staff is of high complexity and multidimensional nature, involving both the independence of international organisations as well as the accountability of international organisations. This topic indeed raises not only legal questions but also many political ones. Therefore, the CAHDI considers that the preservation of the independence and effectiveness of international organisations speaks in favour of a cautious approach.

15. The CAHDI consequently considers that the proposal of the PACE concerning the possibility "to carry out a comparative study of the extent to which the internal remedy systems in international organisations are compatible with Article 6 of the European Convention on Human Rights (ETS No. 5) and with other relevant human rights (including social rights) [...]" would at present be premature as different international organisations are examining the introduction of new alternative means of staff dispute settlement. Furthermore, the vast differences existing between the various types of international organisations would render a comparative study very difficult. In addition, considering that there is no uniform solution for all international organisations and for all activities they carry out the difficulties reaching an encompassing solution should be highlighted. Finally the CAHDI pointed

¹⁵ ECtHR, *Klausecker v. Germany*, Application No. 415/07, *Decision* of 6 January 2015.

¹⁶ Cour d'appel de Bruxelles, *Etat belge (SPF Affaires étrangères) c. Michel Poortmans*, n° 2014/AR/2570, decision of 11 January 2016

¹⁷ See footnote 6, ECtHR, *Waite and Kennedy v. Germany*, no. 26083/94, Grand Chamber judgment of 18 February 1999, paras 50-74.

out that the existing case law of the European Court of Human Rights addresses the question of the compatibility of the internal remedy systems in international organisations with Article 6 of the ECHR.

16. Concerning paragraph 2 of the PACE Recommendation 2122, the CAHDI underlines that, as mentioned above, the Committee is regularly examining the issue of jurisdictional immunity of international organisations under all its different angles.