



Doc. 1025

31 August 1959

Uniform interpretation of European treaties

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Eduard WAHL, Germany

1. 1959 - 11th Session - Second part



A. I . Draft Recommendation

The Assembly,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members, one means of attaining which is the conclusion of international treaties;

Considering that such international treaties cannot be fully effective unless their application rests on a uniform interpretation;

Being resolved to take steps to this end, without prejudice to the constitutional systems of the Contracting Parties;

Considering that it is fitting that the European Court of Human Rights set up by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4th November 1950, should be competent to render advisory opinion on the interpretation of European treaties,

Recommends to the Committee of Ministers :

1. that it should convene a Committee of Experts with instructions to conclude an agreement based on the attached draft, in order to confer on the European Court of Human Rights the competence to give advisory opinions on the interpretation of European treaties;
2. that it should submit the draft Agreement prepared by the Committee of Experts to the Assembly for an opinion before signature by member Governments.

B. II . Draft - European Agreement on the competence of the European Court of Human Rights to render advisory opinions on the interpretation of European treaties

The Governments signatory hereto, being Members of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members, one means of attaining which is the conclusion of international treaties;

Considering that such international treaties cannot be fully effective unless their application rests on a uniform interpretation;

Being resolved to take steps to this end, without prejudice to the constitutional systems of the Contracting Parties;

Considering that it is fitting that the European Court of Human Rights, set up by the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4th November 1950, (hereinafter referred to as the European Convention on Human Rights), should be competent to render advisory opinions on the interpretation of European treaties,

Have agreed as follows :

Article 1

The High Contracting Parties shall recognise, in accordance with the provisions set out below, the competence of the European Court of Human Rights to give advisory opinions on the interpretation of any European convention or other international treaty to which two or more of them are parties.

Article 2

1. Each Contracting Party may at any time notify to the Secretary-General of the Council of Europe the international treaties to which it is a party and in respect of which it agrees to the procedure for interpretation set out in the present Agreement.

2. Notification may be made for a limited or unlimited period.

3. Notwithstanding the provisions of paragraph 1 of this Article, the Agreements set out below, which have been concluded in the framework of the Council of Europe, shall be ipso facto submitted to the system of interpretation provided for in the present Agreement, in so far as the Contracting Party concerned is a party thereto :

European Interim Agreement on social security schemes relating to old age, invalidity and survivors, signed in Paris on 11th December 1953;

European Interim Agreement on social security other than schemes for old age, invalidity and survivors, signed in Paris on 11th December 1953;

European Convention on Social and Medical Assistance signed in Paris on 11th December 1953;

European Convention on Formalities required for Patent Applications, signed in Paris on 11th December 1953;

European Convention on Establishment, signed in Paris on 13th December 1955.

4. The Secretary-General of the Council of Europe shall forward to the Contracting Parties copies of the notifications received.

Article 3

5. When a matter of interpretation concerning any of the treaties mentioned in the notification made by a Contracting Party pursuant to the foregoing Article is raised before the competent judicial or administrative authority of that Contracting Party, the said authority, if it considers that an opinion on the point at issue is necessary in order to reach a decision, may refer the matter, through its Government, to the European Court of Human Rights.

6. Such national authority shall ask the Court for an advisory opinion before taking a decision which, in the interpretation of one of the international instruments mentioned in Article 2, would depart from a decision taken by the competent authority of one of the other Contracting Parties relating to the same treaty.

Article 4

7. The Court shall immediately notify any request for an advisory opinion to the Contracting Parties to the present Agreement, and to the other Parties to the international treaty in respect of which the opinion is requested.

8. Any State thus notified may submit comments in writing within a period of time to be fixed by the Court. The Court may also request a State to give oral explanations.

Article 5

9. The European Court of Human Rights shall express its views in the form of advisory opinions.

10. The opinion of the Court shall not be binding on the authority which has referred a question to it. However, if the authority departs from that opinion, it shall give reasons for its decision.

Article 6

The Court shall notify its advisory opinions to all the Contracting Parties to this Agreement and to the other Parties to the international treaty in respect of which an advisory opinion has been rendered.

Article 7

For the exercise of the functions conferred on it by this Agreement the European Court of Human Rights shall draw up its rules and determine its procedure.

Article 8

11. The present Agreement shall be open for signature by Members of the Council of Europe which have signed the European Convention on Human Rights. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

12. The present Agreement shall enter into force on the day when it shall have been ratified by all the signatories who, at that date, have ratified the European Convention on Human Rights.

13. As regards any Contracting Parties to the European Convention on Human Rights, which ratify the Agreement subsequently, this Agreement shall enter into force on the date of the deposit of their instruments of ratification. Done at...

C. III. Explanatory Memorandum by M. WAHL

1. Introduction

1. On 22nd October 1957, supported by several others, I submitted to the Consultative Assembly a motion for a recommendation on the establishment of a European Supreme Court to hear cases of breaches of European Conventions even when brought by individuals (Doc. 737).

This motion was referred to the Legal Committee which, after a preliminary study of it, reached the following decision at its meeting at The Hague on 9th and 10th June 1958:

" The Legal Committee,

Noting the proposal in Doc. 737;

Considering that it would be premature to adopt a definite position regarding the subject-matter of this proposal,

Decides to appoint a Sub-committee to consider appropriate measures to avoid divergencies in the legal interpretation of uniform European law or of legal conflicts :

- a. either by setting up an information service on the jurisprudence of the various countries, in regard to the same matters;
- b. or by granting a European court the power to decide questions of interpretation of European uniform law or treaties in any given suit.

The Sub-committee would specify to which conventions the measures it recommended were to apply, which legal body should be granted the proposed competence and under what conditions disputes should be referred to it."

In pursuance of that decision, the Sub-committee drew up a report, which was approved by the full Committee on August 21st and is now submitted to the Assembly. It contains a draft European Agreement on this question, together with the necessary explanations.

2. General remarks

2. Before commenting upon the clauses of the draft Agreement, I should like to call your attention to three guiding principles followed by the Sub-committee in preparing this draft.

The first is the respect for the constitutions of member States, in order to offer every one the possibility of adhering to the uniform system of interpretation herein advocated.

Therefore, on the whole, the draft deals only with an " optional system " of uniform interpretation and proposals for " advisory opinions " from the body competent to give a uniform interpretation; opinions which, moreover, will not be binding upon national courts.

The second leads me to propose entrusting the competence of uniform interpretation of treaties to an existing European body—the European Court of Human Rights. This would enable the Committee's objective to be much more easily achieved and relieve member Governments of the need and cost of setting up new machinery.

The third principle followed by the Sub-committee in the preparation of the draft is to avoid any overlapping of competence with the International Court at The Hague. Thus it will be recalled that only States are empowered to apply to The Hague Court, whereas the present draft provides that national judicial authorities may bring a matter before the Court of Human Rights. Furthermore, as regards the competence of The Hague International Court in regard to advisory opinions, it should be noted that, according to Article 96 of the United Nations Charter, only the General Assembly and the Security Council or the Specialised Agencies are empowered to seek an advisory opinion. Under that system, therefore, there is no provision for a request for an opinion by a national judicial or administrative authority.

3. Comments on individual provisions of the draft Agreement

3. In the preamble, the reasons are given which militate in favour of creating within the Council of Europe a system of uniform interpretation of treaties.

The preamble provides that the interpretation shall be entrusted to the European Court of Human Rights. That Court is, indeed, the body best qualified to perform this task

In this respect it is interesting to note that the European Court of Human Rights consists of a number of judges equal to that of the Members of the Council of Europe. This provides a guarantee that all legal tendencies in the diverse systems of law of member States will be represented on this judicial body. Moreover, the Convention lays down that judges of the Court shall be of high moral character and that they must either possess the qualifications required for appointment to high judicial office or be jurists of recognised competence. Since, too, the European Court of Human Rights is unlikely to be overburdened with work, it offers many advantages for the role we wish to confer upon it.

4. Article 1 gives the grounds for recognising the special competence of the European Court of Human Rights to interpret treaties. It is stipulated, moreover, that its competence shall be limited to "advisory opinions".

5. It must be left to each Contracting Party freely to decide for which treaties, to which it is a party, it accepts the system of uniform interpretation proposed.

Nevertheless, to ensure that each Contracting Party accepts such an interpretation at least so far as Agreements concluded within the Council of Europe are concerned, it has been deemed useful to include in Article 2 a special clause (paragraph 3) listing the European treaties to which the system of uniform interpretation would automatically apply in relation to the Courts of each Contracting State, provided that the State concerned is a party to the treaty in question.

The European Agreements mentioned have been selected according to two criteria. First, the Sub-committee chose those which the national courts of the Contracting Parties might be called upon to interpret. Second, it was decided not to select the treaties, such as the Convention on Human Rights and the E.C.S.C., Common Market, Euratom and Benelux Treaties, which themselves provide for a system of uniform interpretation at the request not only of the Governments but of the individuals concerned and of the national courts.

6. Article 3 lays down a procedure for bringing a matter before the Court. It will be noted that the text does not restrict the right to apply to the Court for an advisory opinion to the judicial authorities of Contracting Parties but has extended that right to administrative authorities, since in some countries the application of treaties is a matter for the administration. This is true, in particular, in several countries, of decisions on matters of guardianship.

To ensure a truly uniform interpretation, the Committee thinks that application by a national authority to the European Court for an opinion, which is optional under the terms of paragraph 1, should be made compulsory in cases where the decision of the national authority would differ in its interpretation of a particular treaty from a ruling given by the competent authority of another Contracting Party in respect of the same treaty.

This is the intention of paragraph 2 of Article 3.

It should be noted that the Government which transmits the request for an advisory opinion has no right of supervision over that request; it will act only as the channel of communication between the national court concerned and the European Court.

7. As already stated, the Committee suggests that the competence conferred on the Court by Article 5 in the matter of treaty interpretation should be limited to giving advisory opinions. It has done this in order to ensure that all Member States of the Council of Europe are able to accede to the draft Agreement. This proposal contains nothing which would adversely affect the constitutional practices of Member States and in particular discards the idea of a European Court superimposed on the national courts and with the power to a certain extent to reverse their judgments.

However, in order that opinions given by the Court should retain their value, national courts should be obliged to give reasons for their final decision should this differ from the opinion of the European Court.

8. In Articles 4 and 6, the Committee proposes that all requests for an advisory opinion as well as the actual opinions rendered by the Court shall be notified to all Contracting Parties to the Agreement, as well as to the other parties to the treaty in respect of which the opinions have been rendered. This procedure seems essential for the proper working of the interpretation system advocated in the present draft. Indeed, if the Court's opinion on a question concerning the interpretation of a treaty were not published, the national authority, other than that which requested opinion, would have no knowledge of the opinion rendered by the Court, if subsequently called upon to deal with a similar question.

4. Procedure for extending the competence of the European Court of Human Rights

9. There are various possible ways of conferring on the Court the powers provided for in the present draft. The Committee favours that laid down in Article 8 of the above text. It has the great advantage of corresponding closely to a formula already used in the Council of Europe, namely Article 7 of the First Protocol to the General Agreement on Privileges and Immunities. The entry into force of the Agreement, and hence the extension of the competence of the European Court of Human Rights, are made subject to the approval of all the Contracting Parties to the Convention on Human Rights, this approval being essential for the system outlined in the present draft. The Court could not agree to an extension of its functions unless this is approved by all the Contracting Parties to the Convention on which its competence depends.