



Recommendation 581 (1970)¹

Setting up of new legal machinery within the framework of the Council of Europe

Parliamentary Assembly

The Assembly,

1. Recalling the report of the Legal Affairs Committee contained in [Document 2329](#) and considered by the Assembly in January 1968, in which was emphasised the fundamental task of the Council of Europe of harmonising legal systems and methods of creating an harmonious body of law in Europe in order to facilitate and remove unnecessary impediments to the full development of a European society, a European economy, a European culture and in the end a political Europe ;
2. Accepting that rapid progress with a view to the early completion of the fundamental task above referred to is essential to the realisation of those aims, and that equally essential is the avoidance in the meantime and thereafter of the growth in the field of law of new disharmonies likely to imperil the full development of a united Europe ;
3. Conscious that rapid progress towards the stated objective will involve the Council of Europe in immense and daunting tasks of legal harmonisation and unification, especially (but not exclusively) in the economic, scientific and industrial sectors and in the solution of new problems arising or likely to arise with the rapid advance of knowledge, invention, science, techniques and technology ;
4. Recalling further that the report ([Doc. 2329](#)) questioned whether the existing machinery for carrying out the legal tasks of the Council of Europe is adequate or well adapted to complete within an acceptable time-scale or at all the fundamental task above stated and that accordingly the Assembly, by Order No. 267 (1968), instructed the Legal Affairs Committee to continue to study the problems posed by the report and in particular welcomed consideration of the idea of establishing a new body consisting of a permanent European Law Commission ;
5. Aware that in the period of two years since the adoption of Order No. 267 (1968), exhaustive consideration has been given to the problems posed by the report ([Doc. 2329](#)) and that arising therefrom and from the initiative of the Assembly and the Legal Affairs Committee there has been ; (a) prolonged study within the Legal Affairs Committee of all possible solutions to the problems posed ; (b) consideration at the 5th Conference of European Ministers of Justice, held in June 1968, of reports by the Chairman of the Legal Affairs Committee and others, leading to a resolution in which the Ministers accepted that the variety and complexity of the tasks confronting the Council of Europe in the legal field called for a thorough study of the means of achieving its aims in a more systematic way, and accordingly recommended the Committee of Ministers to carry out such a study ; (c) prolonged consideration by a group of eminent and independent consultant jurists instructed by the Legal Affairs Committee, under the authority given by the Assembly in [Resolution 402 \(1969\)](#), to consider the feasibility of a European Law Commission, resulting in a final report unanimously recommending the establishment of such a Commission within the framework of the Council of Europe ; (d) study by the European Committee on Legal Co-operation (CCJ), upon the instructions of the Committee of Ministers, of the priorities of legal harmonisation and unification which ought to be accepted ;

1. Assembly debate on 23 January 1970 (18th Sitting) (see [Doc. 2693](#), report of the Legal Affairs Committee). Text adopted by the Assembly on 23 January 1970 (18th Sitting).



6. Conscious that the securement of the rapid progress which is essential requires the necessary political will both to establish the machinery and to provide the means of meeting the cost (which, whatever the methods employed, will necessarily be high) of carrying out the tasks, but resolved to show the political will and to work for its acceptance by governments ;
7. Satisfied that the time has come for the Assembly to take a further initiative in urging the Committee of Ministers to grasp the problems, to study the possible solutions and to create as rapidly as possible any essential new machinery,
8. Recommends that the Committee of Ministers :
 - 8.1. accept that the variety and complexity of the tasks confronting the Council of Europe in the legal field calls for a thorough reappraisal of the existing machinery for harmonisation and unification of law in Europe, and for the avoidance of the growth of new disharmonies ;
 - 8.2. accept the financial consequences of giving effect to the results of such thorough reappraisal in order that the legal infrastructure essential to the realisation of the aims of the Council of Europe may be achieved ;
 - 8.3. undertake as a matter of urgency, particularly in the light of the priorities of legal work above enumerated and taking into consideration, in advance of its final results, the study of priorities currently being undertaken by the European Committee on Legal Co-operation (CCJ), the thorough reappraisal above referred to ;
 - 8.4. in undertaking such thorough reappraisal, accept the impracticability of substantially increasing the burden of work now placed upon the national representatives who form the European Committee on Legal Co-operation (CCJ) or of throwing directly upon the Directorate of Legal Affairs, even if expanded, the formidable tasks which require completion ;
 - 8.5. consider therefore whether there is any practicable solution other and better than either :
 - a. the solution unanimously advocated by the study group of consultant jurists, modified as appropriate ; or
 - b. the establishment on an experimental basis (but with reasonable security of tenure of office) of a small advisory panel of consultant jurists, acting within the framework of the Council of Europe and having substantially the following duties and status :
 1. they would operate either full-time or part-time, as experience shows to be necessary ;
 2. they would operate continuously, thus largely obviating the need in future for the use of ad hoc groups of consultant jurists ;
 3. they would work primarily in accordance with instructions given to them by the European Committee on Legal Co-operation (CCJ) or by the Secretary General, but might be available also for tasks directly set or approved by the Committee of Ministers, or proposed by the Assembly or its Legal Affairs Committee, or required for the assistance of the Conference of European Ministers of Justice ;
 4. they would be of the highest available eminence and range of experience ;
 5. they would be employed upon the carrying out of studies and research, the production of reports, conventions, model laws and other instruments, and the promotion of consultation and co-operation between the Council of Europe and governments and non-governmental institutions ;
9. put into effect, after consultation with the Assembly, the solution adopted.