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Jurisdictional immunity of international organisations and rights of their staff

Reply to Recommendation¹: Recommendation 2122 (2018)
Committee of Ministers

1. The Committee of Ministers welcomes Parliamentary Assembly [Recommendation 2122 \(2018\)](#) on “Jurisdictional immunity of international organisations and rights of their staff”, which it agreed to communicate to the Steering Committee for Human Rights (CDDH) and to the Committee of Legal Advisers on Public International Law (CAHDI) for information and possible comments, as well as to the Administrative Tribunal for an opinion.

2. The Parliamentary Assembly calls on the Committee of Ministers to encourage international organisations to which Council of Europe member States are Parties to examine the availability of “reasonable alternative means of legal protection” in the event of legal disputes between international organisations and their staff (paragraph 1.1 of the Assembly Recommendation). The Committee of Ministers considers that as an Organisation advocating the values of human rights, democracy and the rule of law, the Council of Europe should offer its staff timely, effective and fair justice. It encourages other international organisations to take steps to establish such “alternative means”.

3. In this respect, the Committee of Ministers notes that appropriate alternative means of legal protection have been developed by the most important international organisations in order to guarantee the rights of their own staff since recourse to national judiciaries of the member States is not available in such cases.

4. In the framework of the Council of Europe,² the Committee of Ministers notes that the rights, obligations and other 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. As 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”. It is further noted 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 through a “complaints procedure” (Article 59) and an “appeals procedure” (Article 60). 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”. 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.

1. Adopted at the 1325th meeting of the Ministers’ Deputies (26 September 2018).

2. 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*.



5. The Committee of Ministers points out that the principle of transparency advocated by the Assembly is already applied in the Council of Europe (paragraph 1.2 of the Assembly Recommendation). In particular, all the legal texts mentioned in paragraph 4 above are accessible to the staff via the Intranet and those relating to the disputes system are also available on the Internet. The Committee encourages other international organisations to which the member States of the Council of Europe are Parties to ensure similar transparency and availability of information on staff policies and employment disputes to their staff.

6. Concerning the right of access of trade unions to administrative tribunals of international organisations (paragraph 1.3.1), the Committee of Ministers notes a recent ruling of the Dutch Supreme Court in a case brought by a trade union against the European Patent Organisation (EPO).³ The Dutch Supreme Court considered that the requirements of Article 6 of the European Convention on Human Rights (ECHR) had been satisfied, as EPO offered reasonable alternative means to effectively protect the rights of the trade union ensuing from article 11 of the Convention. The Supreme Court noted in particular that while the trade union could not avail itself of any juridical process provided for by the Organisation, EPO employees could challenge measures taken by the Organisation that affect them by means of an internal procedure and subsequently by means of a judicial process at ILOAT and that Organisation employee representatives could complain to ILOAT regarding general rules affecting all employees collectively.

7. In the Council of Europe, under Articles 59 and 60 of the Staff Regulations, the Committee of Ministers recalls that at present only individuals and the Staff Committee may lodge an administrative complaint with the Secretary General and subsequently an appeal with the Tribunal. In particular, under Article 59 paragraph 8 indent c. of the Staff Regulations, the Staff Committee may avail itself of this remedy "where the complaint relates to an act of which it is subject or to an act directly affecting its powers under the Staff Regulations."

8. The Committee of Ministers also notes that the Administrative Tribunal of the OECD has jurisdiction over applications filed by trade unions in respect of any act affecting them or directly prejudicing any rights accorded to them under the OECD Staff Regulations. In this respect, the Committee of Ministers wishes to emphasise the specific context of the Council of Europe where the Staff Committee remains the main collective body participating in social dialogue and trade unions do not enjoy any statutory rights.

9. The Committee notes that the question of creating an appellate judicial body (paragraph 1.3.2) has been raised several times, especially at the level of the co-ordinated organisations which is the appropriate forum for exploring this matter. However, the Committee observes that the introduction of any kind of appeals procedure would result in additional costs and delays in having final decisions and that, for the Council of Europe, the creation of an appellate body is currently neither warranted nor expedient.

10. Furthermore, the Committee of Ministers wishes to underline that the issue of privileges and immunities of international organisations and the rights of their staff is of high complexity and multidimensional in nature, involving both the independence and accountability of international organisations. This topic raises not only legal questions but also many political ones.

11. Taking into consideration the Assembly's call to carry out a comparative study on the compatibility of the internal remedy systems in international organisations with Article 6 of the ECHR (paragraph 1.4 of the Assembly Recommendation), the Committee of Ministers notes that different international organisations are in the process of examining the introduction of new alternative means of staff dispute settlement. As part of the administrative reform currently being undertaken by the Secretary General and its People Strategy 2018-2023, the Council of Europe will also be shortly looking into its regulatory and administrative framework. The Committee of Ministers consequently considers that the proposal to carry out such a comparative study would at present be premature. Furthermore, the vast differences existing between the various types of international organisations would render a comparative study very difficult. In addition, the Committee highlights the difficulties reaching an encompassing solution considering that there is no uniform solution for all international organisations and for all activities they carry out.

12. Finally, with respect to paragraph 2 of the Assembly Recommendation, the Committee notes that the CAHDI regularly examines the issue of jurisdictional immunity of international organisations under all its different angles.

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