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Chapter VI of the Special Message from the Committee of Ministers - Legal and Administrative Questions -

Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Henri ROLIN, Belgium, Socialist Group

1. Opinion

1.1. Harmonisation and unification of national laws

The Assembly notes with interest the suggestion of. the Committee of Ministers that the work of harmonising national laws should be pressed forward. Unification over the entire field of legislation is not, of course, a practical possibility and could not, in fact, be carried out with any lasting effect except by a transfer of legislative powers from the national Parliaments to a European Parliament. But it is without doubt desirable to unify law —• and experience shows this to be feasible — in certain fields where divergences are found to create difficulties in relations between persons of different nationality. Unification of laws on such points should, foe a simple matter between States whose systems of law are based on similar principles and which share a desire to establish closer relations between them.

The Assembly does not believe it practicable, however, to lay down a general and systematic plan for the work which the Council of Europe might undertake in this field during the next few years.

The method most likely to lead to satisfactory results is for the Council to take as a basis the needs encountered in practical life, and also to make use .of, such progress as. may have been achieved in other quarters.

As a starting-point, the Council should consider the studies on a number of questions which have been undertaken in various international organisations, both governmental and non-governmental, which are listed in the special message of the .Committee of Ministers.

Should it be found that the study of a specific question is desirable, and such question is not under examination by a specialised organisation, it would appear desirable for the Council of Europe to request whatever organisation it may think best qualified to do so to prepare a report on the matter.

In the opinion of the Assembly, however, a distinction should be drawn between the Hague Conference on Private International Law and other organisations not empowered to convene, on their own initiative, international conferences. One of the subjects on which national laws could most conveniently be unified is the law on the sale of goods (corporeal movables) between nationals of different countries. A draft uniform, law on this subject was given a first reading at an international diplomatic conference held at The Hague in November, 1951 ; the text, as revised by a special committee, is to be submitted to another conference to be convened at a later date by the Netherlands Government. It would clearly be inappropriate for the Council of Europe to undertake a study of the same question. It appears, moreover, that most of the Member States are already participating in the meetings sponsored by The Hague Conférence on this subject.

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It might be suggested, however, that Iceland, Turkey and possibly the Saar, should also take part in these discussions, and that should certain difficulties be raised by non-Member States of the Council of Europe, the Members of the Council should consider the possibility of signing a Convention within the framework of the Council.

With regard to other legal questions, a recent study by the Secretariat-General has shown that although the Rome Institute for the Unification of Private Law has prepared draft uniform laws, no official action has been taken on them.

The work of the Institute includes :

1. Compulsory insurance for motor vehicles ;
2. The liability of inn-keepers for loss of, or damage to, goods belonging to guests ;
3. Arbitration procedure in respect of international relations in private law ;
4. Representation in international relations of private law.

The Assembly considers that the three first questions arc of sufficient interest for a study to be undertaken at once with a view to determing whether the laws of the Members of the Council of Europe concerning them could be unified on the basis of the draft laws prepared by the Rome Institute. In accordance with what are believed to be the wishes of the Committee of Ministers, the Assembly has already requested its Committee on Legal and Administrative Questions to undertake such studies.

It has also been suggested that, on the one hand, the laws concerning registered trade names of goods the origin of which is guaranteed should be brought into harmony and that, on the other hand, practice should be made uniform wherever conflicts arise between national penal laws. It also has been felt desirable that Member States should take into account judgments passed in other Member States wherever there may have been stay of judgment or in cases of renewed offences.

The Assembly, nevertheless, considers that it would be premature for it to undertake such work until more comprehensive studies have been made by specialised institutions.

The Assembly suggests that, if the Committee of Ministers is agreed on the importance of these questions, the Secretary-General should be authorised to approach the Berne Office, regarding the first, and the International Penal Law Association concerning the other two, in order that these bodies may begin preparatory work.

1.2. European Commission on Civil Status

The Assembly fully concurs with the opinion expressed by the Committee of Ministers that Member States could usefully arrange for the direct exchange between the competent authorities of information concerning civil status. It notes that protocols concerning the International Commission on Civil Status, set up in 1948 by an exchange of letters between Belgium, Prance, Luxembourg, the Netherlands and Switzerland, had been signed by those countries on 25th September, 1950, and 25th September, 1952, whereby other States may become members of the Commission.

So far, only Turkey has accepted the invitation.

Th e Assembly readily supports the view of the Committee of Ministers that the ten Members of the Council of Europe which are not yet members of the Commission should also take part in its work.

1.3. Simplification of frontier formalities for travellers

Th e Assembly welcomes the decision of the Committee of Ministers to include this question in the Programme of Work of the Council of Europe and observes with satisfaction that the importance of its proposals is appreciated and recognised by the Committee of Ministers which finds them " a valuable source of inspiration ". The Assembly can assure the Ministers that, in response to their invitation to continue its work on these questions, it will spare no effort to secure improvements in the present situation and will not be content until this aim is realised.

The Assembly, nevertheless, finds it difficult to understand why the Committee of Ministers' expression of intention has not so far been backed up by positive action on its part during the whole year which has elapsed since Recommendation 51 was passed by the Assembly. This situation is thought by the Assembly to be unfortunate, and it is hoped that appro priate action will be taken by the Committee of Ministers without further delay.

The Ministers have, it is true, and this gesture is appreciated, transmitted the comments of thirteen Governments on Recommendation 51 to the appropriate Sub-Committee of the Committee on Legal and Administrative Questions. While these replies show some improvement in the attitude of some Governments as compared with previous statements, the Assembly regrets that there should still be comparatively little understanding and insufficient appreciation among certain Governments of the need for reforms and of the very real possibilities of achieving them. A study of the comments of some Member Governments gives the impression that the views expressed on certain points may not be so much the views of Governments as those of their permanent officials at home. The Assembly cannot accept many of the comments put forward, which seem to be based on the immutable principle that frontier formalities are one of the assumed discomforts of life.

The Assembly would, therefore, welcome a thorough and broad discussion at the Ministerial level of the possibility of reforms such as have been recently earned out successfully in the Scandinavian countries. The appropriate Assembly Sub-Committee recently had occasion, through the courtesy of the Danish authorities, to inspect the system of control recently instituted between the Scandinavian countries. It is quite convinced that equally radical yet practical measures can very well be taken by other European countries to free travel of unnecessary and useless restrictions and formalities. The experience of the Scandinavian countries shows conclusively that many of the technical difficulties mentioned by certain Governments are not insuperable and can be overcome with a little effort of good will and imagination.

It is to the Ministers themselves and their Deputies that the Assembly looks for prompt, resolute and far-seeing measures of simplification. As was pointed out in the Assembly's two reports, the whole range of existing frontier formalities should be approached with a fresh mind. Wherever it cannot be proved that tlieir abolition would, in practice, result in generally harmful consequences, formalities should be swept away.

The Assembly formally pledges-its support in this task. Already the legislatures in Prance and the German Federal Republic are about to take important decisions in these matters. Individual members of the "Assembly have undertaken to urge Member Governments in their national Parliaments to implement the decisions of the Assembly. It is greatly to be hoped that, as a result of a combination of lall these endeavours on the part of the Assembly and the Committee of Ministers, Member Governments will now. join together, in the words of the Committee of Ministers, " with the aim of reducing to a minimum ' the delays and hindrances to which travellers in Europe are subject ".

1.4. National Minorities

The Assembly recalls, moreover, that in Document 77of 1949 and in Document 6 of 1950, the attention of the Committee of Ministers was twice drawn to the need for a more precise definition of the rights of national minorities, the principle of' which was later included in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. If the Committee of Ministers were of opinion that it is desirable to guarantee to national minorities other rights than the nondiscrimination as stipulated in this Convention, it would-seem appropriate for this matter to be referred to and studied by the Commission of Human Rights.