Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 210 (1999)[1]

Council of Europe Commissioner for Human Rights: draft terms of reference

Parliamentary Assembly

1. Just as the newly-elected, full-time European Court of Human Rights takes up its duties, the Committee of Ministers has transmitted the text of the draft terms of reference for a Council of Europe commissioner for human rights to the Assembly for an opinion.

2. For while the new full-time Court is expected to bring major procedural improvements, it is important to bear in mind that with the enlargement of the Council of Europe, the number of potential applicants has also grown considerably and is now around 900 million people.

3. It is more important than ever, therefore, that the European Court of Human Rights should become what it was always meant to be, namely a subsidiary judicial body, intervening only when national legal systems fail.

4. Instituting a commissioner for human rights is likely to assist this process if he or she succeeds in the – essentially preventive – task which it is proposed to assign him or her.

5. The Assembly considers that it is important to institute a commissioner for human rights and that this should be done without delay, and at least in 1999.

6. With regard to the draft terms of reference submitted to the Assembly, together with the opinion of the Steering Committee for Human Rights (CDDH), it notes that all of the committee's proposals have been incorporated in this draft. Overall, the proposals made by the CDDH represent improvements, not least because they provide some welcome clarification.

7. The Assembly also agrees with the comments made by the CDDH concerning the use of non-sexist language in Council of Europe texts. The draft terms of reference should be amended to take account of this, and when it comes to inviting nominations, the invitation should obviously be couched in non-sexist terms.

8. The Assembly believes that the draft terms of reference of the Council of Europe commissioner for human rights are to be welcomed. It recommends that the Committee of Ministers adopt them swiftly, and before the fiftieth anniversary of the Council of Europe if possible. This would enable the commissioner to be elected by the Assembly in time to take up office by the fiftieth anniversary of the European Convention on Human Rights.

9. It is therefore in a positive spirit that the Assembly recommends that the Committee of Ministers introduce the following amendments in the draft terms of reference of the Council of Europe commissioner for human rights:

Article 2

An explanatory note should clarify the reference to "other human rights instruments of the Council of Europe".
Article 2, paragraph 1

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1. Assembly debate on 29 January 1999 (8th Sitting) (see Doc. 8295, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bindig). Text adopted by the Assembly on 29 January 1999 (8th Sitting).

Modify paragraph 1 as follows:

"The commissioner shall be a non-judicial institution to promote effective observance and full enjoyment of human rights in the member states."

Article 2, paragraph 2

Replace the last sentence by the following text:

"In exceptional cases the commissioner may, if he or she deems it appropriate, deal with individual cases, provided that they are not already before the European Court of Human Rights or are likely to be the object of an application to the Court. Nor will the commissioner consider individual petitions which have already been considered by the Court."

Article 4

Invert the order of sub-paragraphs a and b.

Article 4.c

Add an explanatory note giving some examples of human rights structures, but not an exhaustive list.

Article 4.e

Replace the words "with their agreement, in their efforts to remedy" by "in remedying".

Article 4.f

Replace this sub-paragraph by the following text:

"address, whenever the commissioner deems it appropriate, a report concerning a specific matter to the Committee of Ministers and to the Parliamentary Assembly;"

Article 4.i

Replace the words "with other international organisations" by :

", when he or she deems it appropriate, with other national or international institutions, including non-governmental organisations,"

Article 6

Delete the footnote.

In the last sentence of paragraph 1, after the word "governments", add the words "national parliaments".

Add the following sentence at the end of paragraph 1:

"The commissioner may request relevant information."

Article 7

Add a second sub-paragraph which would read as follows:

"The commissioner shall be entitled, during the discharge of his or her functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder."

Article 9

Add the following words at the end of the first sentence:

"which may be published if he or she deems it appropriate."

Delete paragraph 2.

Article 10, paragraph 1

Replace "three" by "between three and six".

Article 11

Add a second sentence as follows:

"The candidates should be capable of meeting the demands of a full-time office."

Add a third sentence which would read as follows:

"The commissioner’s term of office would end once he or she reaches the age of 70."

Article 12

Delete the footnote.

Insert the following word before "term of office of six years": "non-renewable".