

Facultative Preliminary Rulings by the European Court of Human Rights [Speech]

Seminar in Strasbourg for the occasion of the opening of the 2012 jurisdictional year

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I find the proposal, for Preliminary Rulings by the European Court of Human Rights, very attractive as it will have a positive influence on both the system of the Convention and the formation of a sort of unique global jurisprudential law of fundamental rights. It can lead to a decrease in violations of the Convention and consequently, a decrease in the backlog of the European Court of Human Rights.

I would like to say a few words on some of the technical aspects regarding the nature of the proposal itself. While it would be ideal to open the option to all Courts, that would create a heavy backlog. So, in the interest of efficiency, it would be best to allow access to these Rulings only to the Supreme Courts of the Member States, with allowance for intervention by other Member States as well as by the pertinent parties of the internal case in question. Furthermore, there must be a fast-track in the European Court system proceedings developed to handle these requests. Finally, and perhaps more importantly, the requests for Preliminary Rulings must be facultative so as not to produce liability for the internal Supreme Courts, and those Courts must have the ability to decide if the Preliminary Rulings are to be considered recommendations or binding rulings. A well-known example of the kind of jurisprudence which created the kind of liability that I would like to avoid is found in the European Court of Justice's decisions of *Köbler v Austria* and *Traghetti del Mediterraneo SpA v Italy*. I believe this suggested method would allow for a more harmonious dialogue between the European Court of Human Rights and the National Supreme Courts as it respects individual authority while fostering a positive atmosphere of cooperation, without stepping on anyone's toes.

As I mentioned before, I believe the establishment of a system for Preliminary Rulings by the European Court of Human Rights will also be useful in the formation of a type of global jurisprudential law of fundamental rights. I say this because I believe the dialogue between the European Court of Human Rights and other Courts of Human Rights and International and Supranational Courts*, which was discussed in depth during a past seminar, will grow to encompass also the National Supreme Courts. This kind of open dialogue would strengthen the idea of global jurisprudential law which itself represents the idea of a unique global system governing mankind's fundamental principles. Jurisprudential Law being the natural consequence of the democratic tool which is the Jurisdictional Proceedings (which include public contradictory hearings, motivations, and investigations).

During the codification of the late 19th, and early 20th centuries, the rule stating that 'in absence of a precise legal provision, the case must be decided according to general principles', meant that the case would be decided based on principles that were established internally (effectively closing the decisions within the monopoly of the States' legal systems). Today, that same rule allows for an open system, mainly referring to general principles common to all legal systems.

The presumption on which my observation is based is that a unique global jurisprudential system already exists. A clear example of this is that all Courts (national, international and supranational) already apply general principles such as good faith, equality, pacta sunt servanda, natural justice, and protection of dignity. The proposal for a system of Preliminary Rulings is a tool which moves us in the right direction for realizing a more evolved legal harmony throughout the world.

(*the project on Courts and International Tribunals <PICT> has identified approximately 125 independent institutions which adopt jurisdictional decisions)

