

Summary Report on the
1999 International Judicial Conference

**Courts of Ultimate Appeal VII:
Judicial Independence in Constitutional and Supreme Courts**

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Conference Report¹

Session I: Major Legal Achievements of the Council of Europe During Its First 50 Years.

A. Achievements of the Council of Europe. Since its inception, the Council has effectively used diverse tools to secure the rule of law for the citizens of its member states. The Council of Ministers has adopted many resolutions designed to stimulate and reinforce the development of the rule of law. For example, the Council's resolution on the promotion of judges' independence recognizes the crucial role an independent judiciary plays in maintaining democracy, instructs legislatures and executives to take the steps necessary to provide for independence, and establishes criteria for evaluating judicial independence. Following the initiative of the European Ministers of Justice, the Council also established the Committee of Experts on the Effectiveness of Justice and charged it with identifying means of improving judicial independence. Finally, the Council supports members' efforts to establish national judicial training programs and facilitated the creation of the Lisbon Network which promotes judicial training.

The Convention on Human Rights is a cornerstone of the Council of Europe, and its integration into national legal systems is an undeniable sign of the Council's success in defending fundamental rights. The Convention and accompanying interpretations issued by the European Court of Human Rights and European Commission of Human Rights are now relied on as either controlling or persuasive authority by national courts, including courts of countries that only recently became signatories. The Convention currently protects individual human rights, and while its scope could be extended to cover social rights as well, any proposed enlargement would have to consider the practical financial burdens created by guaranteeing social welfare and the theoretical differences between individual human rights and group social rights.

Many conference participants attributed a portion of the Council's success to its willingness to admit new countries that have started down the road to the rule of law but have not yet enshrined and refined that notion as completely as older democracies. Adoption of legislation guaranteeing human rights and the people's daily enjoyment of those rights do not automatically occur simultaneously. Rather, the rights must be ingrained in the legal system and reinforced at every turn. Accordingly, admitting states that still lack established traditions of human rights gives them an opportunity to develop their legal systems with the Council's support and guidance.

Finally, the European Union's proposal to create its own pan-European court threatens to undermine the Council's Court of Human Rights by creating overlapping jurisdictions. The Council believes that the current Court of Human Rights is a strong defender of democracy and that the problems of concurrent jurisdiction could be resolved if the European Union became a

¹ This report summarizes the deliberations of the 1999 International Judicial Conference. No outside research was done to augment the discussions; rather the report limits its scope to the ideas expressed at the conference. For the sake of clarity and brevity, the report groups related ideas together, and the comments of several speakers are often consolidated into one paragraph. Condensing such a large volume of material into a small report invariably creates some overbroad generalizations and inaccuracies -- the report's author is solely responsible for these as well as any other mistakes in reporting the conference's discussions.

