

RC.IO/9/10  
30 September 2010

ENGLISH only



**OSCE 2010 Review Conference**  
**Warsaw, 30 September – 8 October 2010**  
**Warsaw Session 4 : Rule of Law I**  
**Contribution of the Council of Europe**

**THE COUNCIL OF EUROPE AND  
THE RULE OF LAW**

The efficiency and quality of independent judicial systems in its member states remain a main issue for the Council of Europe.

The actual programme for cooperation of the Council of Europe in the field of rule of law was established following the conclusions of the Third Summit held in Warsaw in May 2005 where the Heads of State and Government of the member states of the Council of Europe, emphasised the need to reinforce the protection of human rights and committed themselves to strengthening the rule of law and the security of citizens throughout the continent, building on the standard-setting potential of the Council of Europe, its mechanisms of legal co-operation and its contribution to the development of international law. They stressed the role of an independent and efficient judiciary in the member states in this respect (Warsaw Declaration of 17<sup>th</sup> May 2005). They decided to develop the evaluation and assistance functions of the European Commission for the Efficiency of Justice (CEPEJ) and to make proper use of the opinions given by the Consultative Council of European Judges (CCJE) in order to help member states to deliver justice fairly and rapidly and to develop alternative means for the settlement of disputes (Action Plan adopted by the Third Summit, 17<sup>th</sup> May 2005).

***Follow-up to 28<sup>th</sup> Ministerial Conference (Lanzarote, 2007)***

During their 28th Ministerial Conference held in Lanzarote, Spain, on 25-26 October 2007, the Ministers of Justice of the Council of Europe Member States identified problems and promoted common solutions to improve access to justice for vulnerable groups, in particular migrants and asylum seekers, and children.

Further to Resolution n°2 on child friendly justice adopted at the Conference, the Council of Europe is currently finalising Guidelines on child-friendly justice intended to enhance children's access to and treatment in justice. In that process, it has decided to listen directly to children and young people. Around 30 partners throughout Europe have contributed to this consultation, preparing and disseminating a questionnaire, but also organising discussion groups with children and young people in their different surroundings in order to find out their views about justice in all its forms. In total, over 3700 replies have been received from 25 countries, analysed by Dr Ursula Kilkelly, an Irish youth rights expert, and taken into account in the drafting of the guidelines on child-friendly justice. Key themes include family, mistrust of authority and need for respect, and the importance for children and young people to be listened to. The final draft Guidelines will be examined by the European Committee on Legal Co-operation (CDCJ) at its Plenary meeting in October 2010 and to be adopted by the Committee of Ministers in November.

## **1. The European standards and their implementation**

In respect to the implementation of the European standards in the legal field the role and work of the European Commission for the Efficiency of Justice should be mentioned. It is important for the Member States to be aware of the deficiencies in their judicial systems and to implicitly contribute to the decreasing of the number of cases before the European Court of Human Rights through the development of a better knowledge of the functioning of justice in the Member States and measures and specific tools which would improve the quality and efficiency of the judicial systems. The implementation of such measures could reduce the number of requests based on the Article 6 of the European Convention on Human Rights.

The Council of Europe's action is based in particular on the legal instruments adopted by the Committee of Ministers in the field of the independence, efficiency and fairness of justice (in particular Recommendation No R (94)12 on the independence, efficiency and the role of judges)<sup>1</sup>, the European Charter on the statute for judges, the Opinions of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE), the case law of the European Court of Human Rights and the conclusions of the Conferences of European Ministers of Justice. It is also guided by the work of the networks of judicial professions set up by the Organisation, such as the Conference of European Ministers of Justice, the European network for the exchange of information between individuals and entities responsible for the training of judges and prosecutors (Lisbon network), the Conference of the Prosecutors General of Europe, or the regular meetings of the Presidents of European Supreme Courts.

In 2006 the European Committee on Legal Co-operation (CDCJ) agreed that it would be important to update the Recommendation No. R(94)12 on the independence, efficiency and role of judges. A Group of Specialists on the independence, efficiency and role of judges (CJ-S-JUST) was set up in January 2007 and proposed amendments to this recommendation in the light of new ideas and practices concerning judicial services and

---

<sup>1</sup> This Recommendation is in the process of being revised in the light of new ideas and practices concerning judicial services and their functioning in Europe. The draft revised Recommendation will be submitted at the end of the year to the CDCJ which will have to approve it before transmitting it for adoption to the Committee of Ministers (2010).

their functioning in Europe. Given the constitutional dimension of the issues at stake, the work was pursued in 2009 by an enlarged Group, the Group of Specialists on the Judiciary (CJ-S-JUD), reflecting the variety of the judicial systems of the Council of Europe member states.

The Group finalised its work and submitted a draft Recommendation on judges : independence, efficiency and responsibilities to the CDCJ, which will examine it at its forthcoming Plenary meeting (11-14 October 2010) in view of its transmission to the Committee of Ministers for adoption before the end of the year.

On the basis of these norms and standards, the Council of Europe has developed its co-operation programme to improve the organisation of independent judicial systems and to strengthen the role and training of judicial professions. The Programme<sup>2</sup> is designed to help beneficiary countries, in particular from South-Eastern Europe and the CIS countries, to press ahead with their institutional, legislative and administrative reforms.

See: [www.coe.int/justice](http://www.coe.int/justice)

The Committee of Ministers has acknowledged the growing seriousness of the problem of excessively lengthy judicial proceedings in the member states as exemplified in the very numerous applications based on Article 6 of the European Convention on Human Rights. It has expressed concern at the danger the problem posed for the rule of law and requested the Steering Committee for Human Rights (CDDH), in the context of its global efforts to guarantee the long-term effectiveness of the Convention system, to particularly address the issue of effective remedies for claims of human rights violations. The result of the this request was Recommendation (2004)6 on the improvement of domestic remedies.

In the wake of this recommendation and the great number of Court judgments calling for the introduction of effective remedies as an important aspect of the execution process, important developments have taken place. Many states have thus over the last years introduced remedies providing both for the acceleration of proceedings and for the award of compensation for damage sustained by victims.

Notwithstanding these efforts, the problem of excessively long judicial proceedings has persisted. In June 2009, the Committee of Ministers therefore instructed the CDDH “to draft a recommendation and supporting documents on existing effective domestic remedies concerning excessive length of proceedings, by giving examples of good practices, in particular those already mentioned by the European Court of Human Rights in its case law.” A Committee of Experts on effective remedies for excessive length of proceedings (DH-RE) was created to prepare the work following which the Committee of Ministers in early 2010 adopted a Recommendation to member states on effective remedies for excessive length of proceedings, together with a guide of good practices.

---

<sup>2</sup> Several major projects are implemented within the framework of Joint Programmes with the European Commission and its various Agencies as well as voluntary contributions from the Council of Europe member states or its observers.

## 2. Improving the organisation of judicial systems

The **European Commission for the efficiency of justice (CEPEJ)** aims to improve the efficiency and quality of the day-to day functioning of the justice systems of member states, thereby generating increased confidence of the citizens in the public service of justice, preventing appeals to the ECHR based on Article 6 and enabling a better implementation of the Council of Europe's relevant instruments (conventions and recommendations in the justice filed). Its ongoing works focus in particular on:

- the evaluation of the judicial systems of all CoE member States thanks to the collection and analysis of data through a specific Scheme aiming at identifying main trends of these systems and defining CoE's priorities to improve justice efficiency<sup>3</sup>,
- the concret knowledge of lengths of proceedings in the member states so as to propose pragmatic tools and measures to improve judicial time management, through the work of the SATURN Centre, which is due to evolve towards a genuine permanent European observatory of judicial timeframes, with the support of the CEPEJ Network of Pilot courts,
- preparation of concrete tools for promoting the quality of justice,
- the European Day of Justice, co-organised in all European countries with the European Commission, including the European Prize of innovative practice contributing to the quality of justice: "The Crystal Scales of Justice",
- the adoption of Guidelines for a better implementation of the existing Council of Europe Recommendations concerning mediation and execution of court decisions.

see: [www.coe.int/CEPEJ](http://www.coe.int/CEPEJ)

## 3. Strengthening the judicial professions

Unless the right training is provided for the legal professions, judicial systems cannot function effectively and will forfeit public trust. Therefore the Council of Europe attaches special importance to dialogue with members of the judicial service, who play a key role in promoting the rule of law and protecting fundamental rights and individual freedoms.

### *Reinforcing the independence and impartiality of judges*

The **Consultative Council of European Judges (CCJE)** is the first body consisting solely of judges ever set up within an international organisation, and in this respect it is unique in Europe. It supports the Committee of Ministers in carrying out the priorities identified in the Framework Global Action Plan for the strengthening of the role of judges in Europe and advises on whether it is necessary to update the legal instruments.

The CCJE has already adopted eleven Opinions for the Committee of Ministers. An Opinion on the relationships between judges and prosecutors will be finalised soon in conjunction with the CCPE.

---

<sup>3</sup> The next report, containing data of 2006, has been made public in October 2008. The next report is expected by mid 2010.

The CCJE may be called upon to provide practical assistance to help States comply with standards relating to judges. It addresses topical issues and, if necessary, visits the country concerned to discuss ways of improving the existing situation in legislative and practical terms. In the course of addressing the issue of professional conduct, the CCJE was consulted by the UN Special Rapporteur on Judicial Independence to make proposals included into the Bangalore Principles of Judicial Conduct.

Under the auspices of the CCJE, regular European Conference of Judges are held (the last one on "Exercise of the missions of judges and prosecutors : complementarity and/or autonomy" took place at the French *Ecole Nationale de la Magistrature* in Bordeaux on 30 June – 1 July 2009.

See: [www.coe.int/ccje](http://www.coe.int/ccje)

### ***Co-operating with prosecutorial systems***

The prosecuting authorities play a crucial role as the interface between governments, which are responsible for crime policy, and courts, which must be independent. Their functions and powers thus depend on a balance, which is not easily defined. The Council of Europe works to define such a balance in **Recommendation Rec. (2000)19 on the role of public prosecution in the criminal justice system**.

The past Conferences of Prosecutors General of Europe (CPGE), which were organised on a yearly basis since 2000 have greatly contributed to achieving this goal.

Recognising the essential role of the public prosecutor in the criminal justice system, and the important contribution to international cooperation played by the prosecutors in the context of the CPGE, the Committee of Ministers decided in 2005 to create the **Consultative Council of European Prosecutors (CCPE)**. This consultative body to the Committee of Ministers has in particular a task to prepare opinions for the Committee of Ministers in order to facilitate and promote the implementation of Recommendation Rec. (2000)19 and to collect information about the functioning of prosecution services in Europe.

The CCJE has already adopted three Opinions for the Committee of Ministers. An Opinion on the relationships between judges and prosecutors will be finalised soon in conjunction with the CCJE.

The CCPE has also been given the task to continue the organisation of regular European conferences of prosecutors.

See: [www.coe.int/ccpe](http://www.coe.int/ccpe)

### ***Supporting judicial training***

The **Lisbon Network** (European Network for the Exchange of Information between Persons and Entities responsible for the Training of Judges and Public Prosecutors) supports the development of judicial training in CoE's Member States. The Network meets regularly to discuss topics of common interest, such as the training of judges and prosecutors, in matters relating to their professional obligations and ethics; the training of judges on the application of international conventions; competence, impartiality and

independence in the recruitment and training of judges; training of judges and public prosecutors in professional skills.

See: [www.coe.int/lisbon-network](http://www.coe.int/lisbon-network)

### ***Co-operation programmes***

Under its various programmes, the Council of Europe has developed a number of assistance activities in order to help CoE member States on issues relating to justice and human rights protection in areas where the monitoring procedures have revealed a need for new measures or a change in approach. This may have come out of the judgments of the European Court of Human Rights (ECtHR), the findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT), the reports of the CoE Human Rights Commissioner (HRC) or the conclusions of the European Commission for the Efficiency of Justice (CEPEJ).

The specific themes addressed are: the support for judicial reform, implementation of the ECHR in the member States, support for Ombudsman institutions, support for prison reform, training of legal professional groups, support for media development and freedom of expression (until September 2009).

### ***ECHR effectiveness at national level is enhanced through effective remedies***

The Council of Europe helps enhancing ECHR effectiveness at the national level through effective remedies in accordance with the Recommendations included in the Declaration of the 114th Session of the CM (May 2004); Third Summit Action Plan; Declaration of the 116th Session of the CM (May 2006); Decision n° CM/867/14062006; Communiqué of 118th Session of the CM (May 2008), Declaration of the 119th Session of the CM (May 2009).

15 activities were organised in 2009 in order for the member states to have national mechanisms to scrutinise the domestic law/practice with the ECHR and to help review domestic law with regard to the compatibility with the ECHR and identify areas in need of reform. There were 10 of these activities planned in 2010.

13 activities were organised in 2009 to tackle problems with the implementation of general measures in specific cases through targeted assistance activities and to strengthen the awareness of the role of the Government Agents (GA). There were 8 of these activities planned in 2010.

12 activities were held in 2009 to enhance the capacity of the GA to represent the State Party before the ECtHR and to strengthen the awareness of the role of the GA in the execution of judgments and in ECHR training for the judiciary. There were 8 activities planned in 2010.

see: [www.coe.int/t/dghl/cooperation](http://www.coe.int/t/dghl/cooperation)

### ***ECHR capacity-building for professional groups***

ECHR capacity-building for professional groups aims at ensuring that the Convention and its case law are incorporated into the decision-making of judges, prosecutors and lawyers at the national level, in conformity with the principle of subsidiarity. In 2009, 159 activities were held in 13 countries and in Kosovo involving more than 2500 legal professionals. The training events included: 1) thematic seminars on selected ECHR Articles and cross-cutting issues; 2) "training-of-trainers" (ToT) seminars for ECHR national trainers; 3) cascade seminars in the regions by ECHR national trainers; 4) study visits to the CoE, including the European Court of Human Rights (ECtHR); 5) conferences and round tables. In particular, ToT training was organised for 20 members of the European Union Monitoring Mission in Georgia on substantive human rights issues and training methodology. Expert support was provided to the Forum on Human Rights Education for Young People organised in Budapest bringing together 180 young trainers from Europe in human rights education. In Kosovo, training activities were organised for judges including judges, prosecutors, legal officers and lawyers under the European Union Rule of Law Mission in Kosovo (EULEX).

The training activities for judges and prosecutors were implemented in co-operation with national training institutions, formally tasked by the authorities with professional training for these target groups, thus the natural partner for the CoE in that field. This was the case in particular with the Academy of Judges and the Academy of Prosecutors of Ukraine, the High School of Justice of Georgia, the National Institute of Justice of Moldova, the Academy of Justice of the Russian Federation and the Federal Academy of Prosecutors of the Russian Federation.

In 2010, these activities were continued. As a thematic example, as of 30 August, within the framework of the Joint Programme between the European Union and the Council of Europe "Combating ill-treatment and impunity", 21 thematic and 23 cascade seminars have already been organised for about 2 200 judges, prosecutors, lawyers, police officials and human rights NGOs in Armenia, Azerbaijan, Georgia, Moldova and Ukraine.

Translations and publications of human rights handbooks, training materials, proceedings of multilateral conference, ECHR Glossaries and relevant ECtHR case law were systematically distributed during the training activities and constituted lasting resources beyond the specific activities in 2008, 2009 and 2010.

In 2009, all training events in 13 countries and in Kosovo were accompanied by the distribution of key extracts or full text of the ECtHR case law in national languages. HUDOC CD-ROMs or DVDs containing ECtHR's database were also distributed. The book "Human Rights and Criminal Procedure: the Case Law of the European Court of Human Rights" by *Jeremy McBride* was translated and published in 6 countries. A quarterly bulletin of summaries of recent relevant ECtHR judgments was prepared and published in Albania, Serbia and Montenegro. In Armenia, a brochure on judicial cases, practice and statistics as regards combating ill-treatment and impunity as well as highlighting the current court system in Armenia, detailed structure and specialisation of courts of all instances in the country was published.

In 2010, Guidelines on European standards for effective investigation of ill-treatment complaints and the brochure on the rights of detainees and obligations of the law

enforcement officials were produced, translated into national languages and distributed to large groups of judges, prosecutors, lawyers, law enforcement officials, NGOs and other experts. Country Reports containing an analysis of the legislative, as well as of the structural and procedural framework, and recommendations about the changes needed to bring the countries' legislation and law enforcement practices into line with European standards as regards investigation of allegations of ill-treatment by law enforcement officials have also been published and distributed.

The European Programme for Human Rights Education for Legal Professionals (the "HELP" Programme) contributed substantially to improving the skills of national training institutions as regards the incorporation of the ECHR into initial and continuous training for judges and prosecutors. The follow-up to the HELP Programme (HELP II Programme), targeting 13 beneficiary countries, was launched on 1 February 2010. It is funded by the CoE Human Rights Trust Fund and will last 36 months. The HELP II is aiming at the further development of the materials on the HELP website, E-learning courses and translations. It will also continue supporting member states in implementing the ECHR at national level by assisting national training institutions for judges and prosecutors in fully incorporating the ECHR into their curricula.

The HELP website, launched in 2007, continued to be used in 2009 and 2010 by all member states of the CoE. The information has been updated. The website includes full curricula on each of the ECHR Articles and transversal themes, course outlines containing all relevant concepts and landmark judgments of the ECtHR, PowerPoint presentations on all the substantive Articles of the ECHR, 70 case studies and moot court exercises, a manual on training-of-trainers, and interactive E-learning courses based on the ECtHR Grand Chamber judgments. These materials are available free of charge in English, French, German, Russian and Serbian ([www.coe.int/help](http://www.coe.int/help)).

see: [www.coe.int/t/dghl/cooperation](http://www.coe.int/t/dghl/cooperation)

### ***Capacity building on independent judicial systems and strengthening the role of judicial professions***

Capacity building on independent judicial systems and strengthening the role of the judicial professions aims to improve the independence, transparency and efficiency of the judicial systems in CoE member states. The activities of the European Union and Council of Europe Joint Programmes (EU-CoE JPs) aim to promote the conditions in which the rule of law and its principles are respected. They focus on the way in which the relevant structures and institutions operate, seeking to ensure that they respect the requirements of the rule of law and of the specific treaty obligations of the member states.

Capacity-building for judicial professionals and judicial systems is based on the CoE findings, in particular by the ECtHR, the Venice Commission, the CEPEJ, the CCJE and the execution of judgments of the ECtHR. It targets the beneficiary countries' fulfilment of their accession commitments and the obligations arising out of their CoE membership. It is this CoE *acquis* regarding the rule of law principles, which makes it possible to pursue a high degree of consensus among member states and which has resulted in the



CoE being recognised as the main organisation in the field of independent and efficient judiciary.

Co-operation activities organised by the CoE have led, inter alia, to the following results:

- a) providing legislative expertise to ensure that domestic regulations conform to the requirements of the rule of law (in particular the independence of the judiciary from executive and legislative powers);
- b) assisting in creating a legal framework for the functioning of legal professions, strengthening their role and status.
- c) strengthening high judicial councils and judicial academies, drafting training curricula and selecting lecturing staff; improving the transparency of judicial systems;
- d) improving transparency in the selection procedure of judges and prosecutors;
- e) putting in place or strengthening effective systems of free legal aid;
- f) strengthening the administration of justice through the training of judges, prosecutors, lawyers, as well as auxiliary court personnel (clerks, registrars) and bailiffs;
- g) improving the efficiency of court management;
- h) providing technical advice on how to improve administration and the computerisation of courts;

Large-scale projects have been implemented in Armenia, Georgia, Moldova, Turkey and Ukraine.

10 activities were organised in 2009 to reinforce judicial organisations and institutions. There were 6 activities for the reinforcement of institutions guaranteeing the independence and quality of judges, 12 activities to improve court management, 3 activities were organised to improve the enforcement of court decisions and develop other extra judiciary means. 27 activities were conducted to reinforce training institutions for judges and court staff. 22 activities aimed to improve the training institution for prosecutors. 6 activities were organised to improve the role and training of lawyers and notaries and ensure that a legal aid system is fully operational.

See: [www.coe.int/t/dghl/cooperation](http://www.coe.int/t/dghl/cooperation)

### ***Capacity-building for law enforcement officials***

The applications to the ECtHR involving allegations of ill-treatment by the police, as well as findings of the CPT during its visits to the beneficiary countries, confirmed that there continues to be a considerable need for assistance in the field.

In 2009, 9 activities were organised for senior and middle ranking law enforcement officers to use European standards in their daily work, in particular the ECHR, the European Code of Police Ethics and the findings of the CPT. The activities were carried out in Moldova, Montenegro, Russian Federation, 'the former Yugoslav Republic of Macedonia', Turkey and Ukraine.

In 2010, 9 activities were set to promote CoE standards on human rights and ethics for law enforcement officials, and 6 activities for senior and middle ranking law enforcement

officers to use European standards in their daily work, in particular the ECHR, the European Code of Police Ethics and the findings of the CPT.

Particular attention is paid to the reform of the police in Moldova in the framework of a Joint Programme with the European Union.

See: [www.coe.int/t/dghl/cooperation](http://www.coe.int/t/dghl/cooperation)

### ***Support for national prison systems***

In 2009, 36 activities were carried out in order to assist the member states in undertaking concrete measures aimed at the improvement of prison management systems. There were 33 activities to ensure that the management and operational staff in prison are able to use European standards in their daily work, in particular the ECHR, the European Prison Rules and the findings of the CPT. In 2010, there were respectively 50 and 39 such activities planned in these two fields.

In 2010, a strategy paper will be prepared and transmitted to the three Ministries of Justice in Bosnia and Herzegovina with recommendations on the introduction of a range of community sanctions anticipated by the law with draft legislative amendments submitted to the Ministries and awareness raised on the European standards applicable in this field. Assistance will be also provided to the three Ministries of Justice and the Ministries of Health in drafting legislative amendments or a new draft law on mental health.

See: [www.coe.int/t/dghl/cooperation](http://www.coe.int/t/dghl/cooperation)