

OSCE Human Dimension Implementation Meeting

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Working Session 8 : 'Rule of Law'

Contribution of the Council of Europe

THE COUNCIL OF EUROPE AND THE JUDICIAL SYSTEM

The proper functioning of the judiciary is an issue of particular importance to the Council of Europe as it is a pillar of the rule of law and the guarantee and the safeguard of individual freedoms and fundamental rights.

At their Third Summit held in Warsaw in May 2005, 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 17th 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, 17th May 2005).

1. The European standards and their implementation

The Council of Europe has been dealing with questions relating to the independence and impartiality of the judiciary and to the rights to a fair trial within a reasonable time (Article 6 of the ECHR). The Council of Europe and has adopted further European norms in this field (see Appendix).

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)¹, 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

¹ This Recommendation is being studied in view of possible updatings.

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.

On the basis of these norms and standards, the Council of Europe has developed its "Co-operation programme to strengthen the Rule of Law" within its member states (in particular in South-Eastern Europe and the CIS countries). The Programme² is designed to help beneficiary countries to press ahead with their institutional, legislative and administrative reforms. They chiefly involve working with government authorities to:

- prepare and introduce legislation and an operational framework which match the country's specific needs and features, but are also consistent with fundamental rule-of-law principles;
- ensure that reforms are carried out in accordance with these principles, and as prescribed by law, by providing in-service training for professionals on all levels of the legal system who are involved in implementing new legislation.

See: www.coe.int/justice
www.coe.int/admin

2. Improving the organisation of judicial systems

Improving the efficiency of justice

The **European Commission for the efficiency of justice (CEPEJ)** aims to improve the efficiency and functioning of the justice systems of member States, thereby generating increased confidence of the citizens in justice, preventing appeals to the ECHR based on Article 6 and enabling a better implementation of the Council of Europe's relevant instruments. 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 efficiency³,
- an ambitious Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe" which is being developed into concrete tools and measures, with the support of the CEPEJ Network of Pilot courts,
- the European Day of civil Justice, co-organised in all European countries with the European Commission, including the European Prize of innovative practice contributing to the quality of civil justice: "The Crystal Scales of Justice".

see: www.coe.int/CEPEJ

Reinforcing the role of administrative justice

² Several major projects are implemented within the framework of Joint Programmes with the European Commission **and its various Agencies**.

³ The next report, regarding 45 European states, will be made public in October 2006

In order to improve the protection of private persons in the context of their relations with public administration, a recommendation on the judicial review of administrative acts was drafted in 2004. This text draws on the principle that all administrative acts must be subject to judicial review. This instrument will supplement the legal instruments adopted with reference to civil and criminal proceedings.

see: www.coe.int/admin

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 finalised seven Opinions (see Appendix) for the Committee of Ministers. An Opinion on the role of national judges in ensuring an effective application of international and European law and an Opinion on the role of judges in the context of terrorism will be finalised soon. It is presently working on the the role of national judges in ensuring an effective application of international and european law and a genuine co-operation with international judicial institutions as well as on thethe role of judges in striking a balance between protecting the public interest and human rights in the context of terrorism.

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, European Conference of Judges were held in Strasbourg (November 2003) on: "Early settlement of disputes and the role of Judges" and in Krakow, Poland (25 - 26 April 2005) on "Justice and Media". The next Conference (first part of 2007) will address the role and powers of the councils for the judiciary (or similar bodies)

See: www.coe.int/ccje

Under its "**Co-operation programme to strengthen the Rule of Law**", the Council of Europe provides assistance to its member States on questions relating to judicial practice, and develops a number of large-scale programmes to address problems connected with independence of justice.

The **CARDS Regional project (CARDS Justice)** focuses on the establishment of an independent, reliable and functioning judiciary, and the enhancing of the judicial co-operation in the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, "The former Yugoslav Republic of Macedonia") **and thereby to contribute to the approximation of legislation and its enforcement in the area of the judiciary to European values, principles, standards and norms at a national level.** This three-year project is implemented by the Austrian Ministry of Justice, in a consortium with the Council of Europe and the Ministries of Justice of Germany, Italy, Slovenia, Bulgaria and Romania. The project is financed largely by the European Commission and the Council of Europe.

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 European Committee on Crime problems (CDPC) on difficulties concerning the implementation of Recommendation Rec. (2000)19, to promote the implementation of this recommendation, and to collect information about the functioning of prosecution services in Europe. Given the success of the CPGE, the CCPE has also been given the task to continue the organisation of conferences on topics of common concern to public prosecutors.

The "**Co-operation programme to strengthen the Rule of Law**" is designed to foster direct contact between prosecution services in the member states. It centres on the training of prosecutors and reforming relevant legislation on the organisation of the prosecution system.

See: www.coe.int/prosecutors

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.

The Council is supporting its Member States to **set up or reform training structures for judges** (e.g. setting-up and development of judicial training schools in Albania, Bosnia and Herzegovina, Georgia, Moldova, Romania, Kosovo - Serbia and Montenegro -, Ukraine, and co-operation with the Academy of Justice in the Russian Federation).

See: www.coe.int/judges
www.coe.int/legalprof

Enhancing the role of lawyers

The Council of Europe also helps to harmonise the rules on lawyers, who play a key role in safeguarding the right to a fair trial. Relevant here is **Recommendation Rec. (2000) 21 on the freedom of exercise of the profession of lawyer** (general principles on the legal training of lawyers and their entry into the profession, professional standards, the role and duties of lawyers, disciplinary proceedings and access for everyone to lawyers).

In the context of its “**Co-operation programme to strengthen the Rule of Law**”, the Council of Europe is working with a number of countries (e.g. Albania, Romania, Moldova, **South Caucasus**) on bar reform and the training of lawyers.

Representatives of the bar associations of member states meet to discuss inter alia the role and responsibilities of lawyers in a democratic society. In 2001 the Council of Europe set up the Regional Council of the Bars of South-eastern Europe to support the organisation of the profession and develop regional training. A regional training centre was created in 2003 in Ankara.

The Council of Europe is organising in cooperation with the Bar Association of Croatia the 5th meeting of the Regional Council of the Bars of South-Eastern Europe and the second training session of the Common Training Centre in Zagreb on 16 – 17 October 2006 and 18 – 19 October 2006 respectively.

see: www.coe.int/lawyers

Enhancing the role of Enforcement agents

Enforcement agents play a fundamental role in enforcing court decisions and are also the focus of specific co-operation activities in particular as regards their role, remuneration, working conditions, status and training. Within the framework of its “Co-operation programme to strengthen the Rule of Law”, the Council of Europe supports the practices and procedures of enforcement in central and eastern European countries (e.g. Armenia, Georgia, Moldova, Russia, Serbia and Montenegro and Ukraine). It also continues to encourage the training for bailiffs (e.g. Russian Federation, Ukraine).

Enhancing the role of Court registrars

Court registrars play a major administrative role in the judicial system. The relevant Council of Europe text is Recommendation Rec (86) 12 concerning measures to prevent and reduce the excessive workload in the courts, which states that member governments should gradually reduce the number of non-judicial tasks performed by judges and assign them to other officials, such as registrars. The “Co-operation programme to strengthen the Rule of Law” includes special assistance with reform of the

registrar system and the training of registrars (e.g. in Albania, Bulgaria, Moldova, Romania, Ukraine).

Albania is particularly assisted in this field through a 2-year CARDS EC/CoE Joint Programme on support to the training of court administrators which includes, *inter alia*, the training of court registrars (15/11/2005 – 15/11/2005).

Enhancing the role of Notaries

The Council of Europe is working with ministries of justice and representatives of the notary's profession on defining the organisation of that profession, which helps to guarantee security of legal transactions – itself essential to the harmonious functioning of a democratic society. It also attempts to highlight this aspect of the notary's role in its co-operation activities to strengthen the Rule of Law (e.g. in Albania, Azerbaijan, Bulgaria, Moldova).
See: www.coe.int/justice

4. Strengthening judicial co-operation in combating organised crime

The 3rd Summit confirmed the importance of promoting the implementation and develop the Council of Europe's instruments and **mechanisms of co-operation** in fighting various forms of criminality and in protecting the citizens' security.

International/transnational co-operation is indeed a key element to efficiently fight modern forms of criminality, which are transnational in character. The Council of Europe has developed, since the early 50ies, international instruments which offer the legal basis of such co-operation: notably the European Convention on extradition, the European Convention on legal assistance in criminal matters, and their Protocols.

Following the 5th Resolution adopted by the European Ministers of Justice, at their 26th Conference in Helsinki (7-8 April 2005), the **European Committee on Crime Problems (CDPC)** is mandated to examine the effective implementation of co-operation mechanisms provided for by the Council of Europe conventions in criminal matters, any difficulties resulting there from, as well as possible improvements that could be made. Current work also aims at improving the visibility and consistency of the normative work of the Organisation. A compilation of existing standards applicable to transnational criminal justice is under elaboration, as well as publications aimed at facilitating the work of national practitioners in charge of the judicial co-operation in criminal matters.

See www.coe/tcj

Through the “**Cooperation programme to strengthen the rule of law**”, assistance is being given to various member States to improve their legal framework on criminal justice.

The Council of Europe is currently implementing a regional **CARDS Programme** in the five CARDS countries (Western Balkans). It aims at developing a regional strategy against economic and organised crime in South-eastern Europe and to provide law enforcement institutions with the tools necessary to implement the strategy⁴. To this end,

⁴ The part of the programme devoted to migration issues is implemented by the IOM

the assistance to ratifying and fully implementing the Second additional protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182) is an important component of the programme.

Other CoE-EU joint programmes are being implemented in Ukraine and Moldova to assist the country in the ratification of the CoE Conventions on judicial co-operation in criminal matters (in particular the ETS 182) and the effective implementation of the co-operation mechanisms.

The Council of Europe supports Serbia through the PACO Serbia EAR/ CoE Joint Programme against economic crime which started in December 2005 for a 2-year period. The project components are focused, *inter alia*, on the reform of the criminal legislation on economic crime and cybercrime.

5. Internet

Advances in the field of information technology can be used to make judicial systems more effective. Recommendation Rec (2001) 2 concerning the design and redesign of court systems and legal information systems in a cost effective manner notes that up-to-date and cost-effective organisation of state-of-the-art information technology systems can improve the quality, speed and effectiveness of justice. **Recommendation Rec (2001) 3 on the delivery of court and other legal services to the citizen through the use of new technologies** lays down a series of principles and guidelines to facilitate delivery of court services to the citizen through the use of new information technologies. This recommendation states that legal information, public registers and court services, including information on the state of court proceedings, should be available in electronic form, and proposes a strategy for promoting the application of these principles in member States.

See: [http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/
Operation_of_justice/Information_technology/](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Operation_of_justice/Information_technology/)

Appendix

Relevant texts

Independence and organisation of justice

Conventions

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5)
- European Agreement on the transmission of applications for legal aid (ETS No. 92)
- Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid (ETS No. 179)

Resolutions and Recommendations

- Resolution Res (76) 5 on legal aid in the field of civil, commercial and administrative matters
- Resolution Res (78) 8 on legal aid and advice
- Recommendation Rec (81) 7 on measures facilitating access to justice
- Recommendation Rec (84) 5 on the principles of civil procedure designed to improve the functioning of justice
- Recommendation Rec (86) 12 concerning measures to prevent and reduce the excessive workload in the courts
- Recommendation Rec (93) 1 on effective access to the law and to justice for the very poor
- Recommendation Rec (94) 12 on the independence, efficiency and role of judges
- Recommendation Rec (95) 5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial matters
- Recommendation Rec (95) 12 on the management of criminal justice
- Recommendation Rec (98) 1 on family mediation
- Recommendation Rec (99) 6 on the improvement of the practical application of the European Agreement on the transmission of applications for legal aid
- Recommendation Rec (99) 19 concerning mediation in penal matters
- Recommendation Rec (2000) 19 on the role of public prosecution in the criminal justice system
- Recommendation Rec (2000) 21 on the freedom of exercise of the profession of lawyer
- Recommendation Rec (2002) 10 on mediation in civil matters
- Resolution Res (2002) 12 establishing the European Commission for the efficiency of justice (CEPEJ)
- Recommendation Rec (2003) 14 on the interoperability of information systems in the justice sector
- Recommendation Rec (2003) 15 on archiving of electronic documents in the legal sector
- Recommendation Rec (2003) 17 on enforcement

- Recommendation Rec (2003) 18 containing a transmission form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (ETS No. 092) and its Additional Protocol (ETS No. 179)

Other standards

- the European Charter on the statute for judges
- Opinions by the CCJE:
 - Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges (Recommendation Rec (94) 12 on the independence, efficiency and role of judges and the relevance of its standards and any other international standards to current problems in these fields)
 - Opinion No. 2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights
 - Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality
 - Opinion No. 4 (2003) on appropriate initial and in-service training for judges at national and European levels
 - Opinion No. 5 (2003) on the law and practice of judicial appointments to the European Court of Human Rights
 - Opinion No. 6 (2004) on a fair trial within a reasonable time and judges' role in trials, taking into account alternative means of dispute settlement
 - **Opinion N° 7 (2005) on justice and society**

Administrative justice

Resolutions and Recommendations

- Resolution Res (77) 31 on the protection of the individual in relation to the acts of administrative authorities
- Recommendation Rec (80) 2 concerning the exercise of discretionary powers by administrative authorities
- Recommendation Rec (84) 15 relating to public liability
- Recommendation Rec (87) 16 on administrative procedures affecting a large number of persons
- Recommendation Rec (89) 8 on provisional Court protection in administrative matters
- Recommendation Rec (91) 1 on administrative sanctions
- Recommendation Rec (2001) 9 on alternatives to litigation between administrative authorities and private parties
- Recommendation Rec (2003) 16 on the execution of administrative and judicial decisions in the field of administrative law
- Recommendation Rec (2004) 20 on judicial review of administrative acts

Judicial co-operation in criminal matters

European Convention on Extradition (ETS 24) and its two additional Protocols (ETS 086, 098)

- Resolution (75) 12 on the practical application of ETS°24
- Resolution (78) 43 on reservations made to certain provisions of ETS°24
- Rec. R (80) 7 concerning the practical application of ETS°24
- Rec. R (80) 9 concerning extradition to States not party to the European Convention on Human Rights
- Rec. R (86) 13 on the practical application of ETS°24 in respect of detention pending extradition
- Rec. R (96) 9 concerning the practical application of ETS°24

European Convention on Mutual Assistance in Criminal Matters (ETS 30) and its two additional Protocols (ETS 099 and 082)

- Resolutions (71) 43 and (77) 36 on the practical application of ETS°30
- Rec. R (80) 8 concerning the practical application of the ETS°30
- Rec. R (83) 12 concerning safe conduct for witnesses in application of Article 12.1 of ETS°30
- Rec. R (85) 10 concerning letters rogatory for the interception of telecommunications

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 51)

- Rec. R (79) 14 concerning the application of ETS 51

European Convention on the International Validity of Criminal Judgments (ETS 70)

- Rec. R (79) 13 concerning the application of ETS°70

European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)

- Rec. R (79) 12 concerning the application of ETS°73

European Convention on the Transfer of Sentenced Persons (ETS 112) and its additional Protocol (ETS 167)

- Rec. R (84) 11 concerning information about ETS°112
- Rec. R (88) 13 and R (92) 18 concerning the practical application of ETS°112

European Convention on Laundering, search, seizure and confiscation of the proceeds from crime (ETS 141)

- Rec. R (91) 12 concerning the setting up and functioning of arbitral tribunals under Article 42, par. 2 of ETS°141

- Recommendation R (99) 20 on the friendly settlement of difficulties

Information technology

Resolutions and Recommendations

- Resolution Res (73) 23 on harmonisation in the field of legal data processing in the member States of the Council of Europe
- Recommendation Rec (80) 3 concerning teaching, research and training in the field of “computers and law”
- Recommendation Rec (83) 3 concerning the protection of users of computerised legal information services
- Recommendation Rec (92) 15 concerning teaching, research and training in the field of law and information technology
- Recommendation Rec (95) 11 concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems
- Recommendation Rec (2001) 2 concerning the design and re-design of court systems and legal information systems in a cost-effective manner
- Recommendation Rec (2001) 3 on the delivery of court and other legal services to the citizen through the use of new technologies