

OSCE Human Dimension Implementation Conference

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Working 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 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 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 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.

Concerning the work on the reform of the European Court of Human Rights, whilst it is clear that the entry into force of Protocol No. 14 to the European Convention on Human Rights since 1 June 2010 is offering some respite, the situation of the Court has nevertheless continued to deteriorate, on account of its ever-increasing caseload.

The Steering Committee for Human Rights (CDDH) has been working on reform of the Convention system since 1999, before the European Ministerial Conference on Human Rights, held in Rome in November 2000 to mark the 50th anniversary of the Convention. This work can be divided into three phases: the first, from 2000-2004, culminated in the reform package that included Protocol No. 14 and a number of Recommendations¹ the second, from 2004-2009, involved review of implementation of the reform package Recommendations and follow-up to the Report of the Group of Wise Persons and culminated in the CDDH’s Activity Report and its Opinion on the issues to be addressed at the Interlaken High Level Conference on the Future of the Court (February 2010); and the third, current phase concerns follow-up to and implementation of the Interlaken Declaration, the Izmir High Level Conference on the Future of the Court (April 2011) having adopted a Follow-up Plan building on the Interlaken Action Plan.

Since the Interlaken Conference, the CDDH has presented proposals for measures that do not require amendment of the Convention and measures requiring amendment of the Convention. It is currently examining, in particular, the following issues, without, however, having taken any decision at this stage on these sensitive matters:

- a new filtering mechanism within the Court going beyond the existing single judge procedure;
- the treatment of repetitive applications;

¹ Recommendation (2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; Recommendation (2002)13 on the publication and dissemination in the Member States of the text of the ECHR and of the case-law of the European Court of Human Rights; Recommendation (2004)4 on the ECHR in university education and professional training; Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the ECHR and Recommendation (2004)6 on the improvement of domestic remedies.

- allowing the Court to respond to requests for advisory opinions in appropriate cases also from certain national courts;
- the introduction of a system of fees and/ or of compulsory legal representation for applicants to the Court;
- amendment of the admissibility criterion requiring manifest disadvantage to allow wider application by the Court;
- the introduction of a simplified procedure for amendment of certain provisions of the Convention, possible modalities for which could be a Statute for the Court or insertion of a new provision into the Convention.

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 efficiency²,
- the concrete 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, including a Handbook for organising court satisfaction surveys and a report on "*contractualisation* and judicial processes",
- 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

² The last report, containing data of 2008, has been made public in September 2010. The next report is expected by mid 2012.

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 thirteen Opinions for the Committee of Ministers. An Opinion on "Justice and Information Technologies" will be finalised soon.

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.

Under the auspices of the CCJE, regular European Conference of Judges is held.

See: 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**.

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 five Opinions for the Committee of Ministers. An Opinion on prosecutors and prison administration will be finalised soon.

The CCPE has also been given the task to continue the organisation of regular European conferences of prosecutors (the last one addressed the reform of the prosecution system in Italy – Rome, 4 – 5 July 2011).

See: www.coe.int/ccpe

Supporting judicial training

The **Lisbon Network** (European Network of judicial training institutions) supports the development of judicial training in CoE's Member States. The Network meets regularly to discuss topics of common interest. It cooperates closely with the CEPEJ.

See: 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).

10 activities were organised in Bosnia and Herzegovina, Georgia, "The former Yugoslav Republic of Macedonia" and Montenegro in 2010 and 7 in 2011 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.

8 activities were organised in Bosnia and Herzegovina, Georgia, "The former Yugoslav Republic of Macedonia", Montenegro, Russian Federation and Ukraine, in 2010 and 5 in 2011 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).

8 activities were held in Bosnia and Herzegovina, Georgia, "The former Yugoslav Republic of Macedonia", Montenegro, Ukraine in 2010 and 4 in 2011 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.

see: www.coe.int/t/dghl/cooperation

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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

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 2010, activities were held in 13 countries and they 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), and to the EU institutions; 5) conferences and round tables; 6) E-learning courses.

The training activities for judges, prosecutors and lawyers 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. Co-operation with national Association of Judges and Bar Associations, such as the Chamber of Advocates of Armenia, was also strengthened.

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. 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" was translated and published in Armenian, Georgian, Russian, Ukrainian and Moldovan. The availability of human rights materials in national languages in all beneficiary countries has increased due to translation and publication of the CoE handbooks and ECtHR case law. Substantial training and capacity-building activities were carried out also under the EU/CoE JP entitled "Access to Justice in Armenia".

In 2011, these activities were continued. The Joint Programme between the European Union and the Council of Europe entitled "Combating ill-treatment and impunity" finished on 30 June 2011. In total, it has resulted in about 7 000 judges, prosecutors, investigators, lawyers, law enforcement officials and human rights NGOs in Armenia, Azerbaijan, Georgia, Moldova and Ukraine trained on the ECHR, and their improved ability to apply ECHR standards and ECtHR case law in their daily work as regards protection of the rights of detainees and effective investigation of allegations of ill-treatment against law enforcement officers. The number of domestic court judgements based on the ECHR has increased, and the prosecutorial practices have also increasingly referred to the ECHR standards. In all five beneficiary countries, there have been a number of convictions for ill-treatment along with structural and regulatory improvements in the work of the judicial, prosecutorial and law enforcement systems. There have also been policy changes leading towards less tolerance for ill-treatment, and increased transparency of European standards in the context of these countries' commitments to the CoE. The project's outreach to mass audiences and enhanced awareness among the population on the rights of detainees and the obligations of law enforcement officials have been effective.

Upon the project's completion in June 2011, the EU funded a follow-up project entitled "Reinforcing the fight against ill-treatment and impunity" which runs until the end of 2013 and aims at building upon the results of the previous project, and at developing further the productive partnerships established with national authorities and other stakeholders. The follow-up project also includes a new component of combating ill-treatment by officials of penitentiary institutions.

In 2011, under the new EU/CoE JP "Training of military judges and prosecutors in Turkey", Working Groups on training and analysing military justice systems have identified the relevant needs, and training and capacity-building activities started. Under the JP "Enhancing the role of the supreme judicial authorities in respect of European standards in Turkey", about 500 key decision-makers have been trained, including in the form of series of study visits to the CoE and EU institutions.

The HELP II Programme, which is a follow-up to the European Programme for Human Rights Education for Legal Professionals (the "HELP" Programme) contributed to

improving the skills of national training institutions as regards the incorporation of the ECHR into initial and continuous training for judges and prosecutors. It has become a source of training methodology specifically adapted to the needs of the beneficiary countries and target groups. It continued 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. Furthermore, specific training materials and E-learning courses were developed under the project reflecting the transversal needs of judges and prosecutors in each training institution.

The HELP website continued to be used in 2011 in all member states of the CoE. The information has been continuously updated. Starting in October, the format of the website will be changed to a more modern user-friendly outlook including a number of new features for interactive learning and professional exchanges. 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, 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).

see: 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' fulfillment 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 through the introduction of pilot court management practices;
- h) providing technical advice on how to improve administration and the computerisation of courts;

Large-scale projects have been implemented in Armenia, Georgia, Turkey and Ukraine. In addition, since January 2011 the Council of Europe has implemented a European Union funded project which aims at supporting the newly established system of appeal in civil and criminal matters in the Russian Federation, which will become effective as of January 2012 and January 2013 respectively. The objective is to advise the Russian authorities on organisational and legal measures which may help smoothen the impact of the reform.

See: www.coe.int/t/dghl/cooperation/capacitybuilding/

Capacity-building for law enforcement officials

The case law of the ECtHR related to allegations of ill-treatment by the police and the findings of the CPT during country visits have identified the need for further assistance to law enforcement institutions in order to increase their professional skills in line with the CoE and CPT standards.

Particular attention to the reform of the law enforcement institutions in Moldova is being paid within the framework of the Joint Programme between the European Union and the Council of Europe "Democracy Support Programme in the Republic of Moldova". Through its relevant components a number of activities have been organised in co-operation with the Moldovan Police Academy and the National Institute of Justice, comprising a conference on the reform of the Ministry of Internal Affairs and police, an assessment of the laws on police and carabinieri as to their compliance with European standards including a round table to discuss the assessment, cascade training seminars for approximately 200 judges and prosecutors and for 450 policemen all around the country on combating ill-treatment and impunity, with reference to Article 3 of the ECHR and the case law of the ECtHR in respect of Moldova, on the Moldovan legal system of prevention and combating ill-treatment and the CPT findings on ill-treatment and impunity during visits to Moldova; workshops on riot control for law enforcement officials, on the relationship between media and law enforcement agencies, on project design and identification of priority projects for increasing the capacity building of the Ministry of Internal Affairs as well as a study visit for officials from the Moldovan Police Academy and Ministry of Internal Affairs to the Netherlands.

Activities in the field of police are planned to be organised in the framework of the Joint Programme between the Council of Europe and the European Union on "Reinforcing the

fight against ill-treatment and impunity in Moldova, Ukraine, Armenia, Georgia and Azerbaijan”.

A multilateral workshop on the dissemination of the key principles of the European Code of Police Ethics has taken place at the COE headquarters with the active participation of the OSCE. Contacts are being established with the OSCE and the Fundamental Rights Agency to explore the possibility of developing an e-learning module for law enforcement officials in the field of policing and human rights.

See: www.coe.int/t/dghl/cooperation

Support for national prison systems

The CoE is assisting a number of beneficiary countries to improve the management of the prison system in order to provide better conditions and treatment for prisoners and guarantee the protection of their human rights in line with the CoE and CPT standards.

The prison reform in Turkey is being supported through the implementation of the Joint Programme (JP) between the Council of Europe and the European Union “Dissemination of Model Prison Practices and Promotion of the Prison Reform in Turkey”. Among the activities organised in the framework of this JP could be mentioned the 35 two-day training sessions organised for approximately 7000 prison staff in Turkish medium and high security level prisons on the European Prison Rules and other European standards in the penitentiary field aiming to support the Turkish authorities to build up a sustainable capacity for putting such standards into practice; 5 workshops organised with the participation of Turkish Human Rights NGOs and the Turkish MoJ to draw up a strategic plan for improving the co-operation between the public sector and NGOs in the penitentiary field (a draft strategy paper is already available for final consultation with the NGOs); the preparation by CoE experts of a guidance manual for teachers in prison education in Turkey and the training provided by the CoE experts to approximately 350 teachers on the content of the manual; the publication and the distribution of 20000 copies of the Booklet on the European Standards in the Penitentiary Field to the staff of all 90 prisons, in support of the above-mentioned activities organised in the framework of the JP.

A two-year project “Support for Prison Reform in Ukraine”, financed by SIDA, is being implemented since March in co-operation with the Ukrainian State Penitentiary Service, the MoJ and other relevant partners. During the ongoing inception phase of this project, the main priorities are being identified through careful needs assessment by a “Stakeholders Platform”. The issues being examined are strengthening of the probation service aiming to reduce prison overcrowding, supporting the reintegration of the offenders into the society and reducing reoffending, as well as developing the professional skills and management capacities of the prison staff for the protection of human rights in prisons. Health care provision is also under consideration.

The CoE has recently provided support to the Ministry of Justice of Armenia to improve the legal basis related to the enforcement of community sanctions and measures and the functioning of a probation service, including a CoE expert opinion as well.

Staff of the Department of the Federal Service for Execution of Sentences in the Chechen Republic and representatives of the Chechen Office of the Commissioner for Human Rights have been trained on human rights and the social rehabilitation of the offenders through pre-release programmes

Ways of improving the conditions and the treatment of life-sentenced and other long-term prisoners, young offenders and women prisoners and the provision of health care in prisons in Moldova have been on the focus of the bilateral co-operation activities organised in co-operation with the Department of Penitentiary Institutions of the Ministry of Justice of Moldova.

A Multilateral meeting on "Improving detention conditions and health care in prisons" took place in the CoE with representatives of the Prison Administrations and prison medical staff from eleven countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, the "former Yugoslav Republic of Macedonia", Georgia, Moldova, Montenegro, Russia, Serbia and Ukraine). The most efficient ways of improving the detention conditions and the provision of health care in prisons and of applying medical ethics and best practices in Europe in line with the Council of Europe and CPT standards were elaborated at the meeting.

See: <http://www.coe.int/t/dghl/cooperation/capacitybuilding>