

OSCE Human Dimension Implementation Conference**Warsaw, 11-22 September 2017****Working Session 13****Contribution of the Council of Europe****THE COUNCIL OF EUROPE AND
THE RULE OF LAW**

The rule of law, the efficiency and quality of independent judicial systems in its member states, as well as the means to ensure its implementation, 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

In 2014-2015, the work of the Steering Committee for Human Rights (CDDH) regarding the reform of the system of the Convention focused on its “longer-term” future with a view to presenting a comprehensive report to the Committee of Ministers of the Council of Europe by the end of 2015.

Innovative working methods have been applied in order to “think outside of the box”. From November 2013 to January 2014, an “open consultation” process was held, which resulted in some 120 contributions from across Europe on many different issues. A special drafting group has been created composed of national experts and eminent legal personalities such as the former Court President, Sir Nicolas Bratza, and the former Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles. The European Network of Human Rights Institutions (ENHRI) and civil society representatives (with observer status) have actively contributed to the work of the drafting group, as well as to



a series of events organised in connection with issues addressed in the report. In early April 2014, the CDDH took part in a conference organised by the PluriCourts academic network in Oslo; the President of the ENHRI (Mr Alan Miller) contributed significantly to the conference with his speech entitled, “The Court in the year 2030 – Accountability and authority”.

See: www.coe.int/cddh
www.coe.int/reformECHR

2. Defining the content and assessing the respect for the rule of law

The Venice Commission, the Council of Europe’s body in charge of constitutional matters, addressed the issue of the rule of law with a double aim: first, to define its content and, second, to provide an instrument to assess its implementation.

This first led, in 2011, to the adoption of the report on the rule of law. This study explored at the outset the possibility of reading a consensual definition of the rule of law which may help international organisations in completing their task of disseminating this fundamental value.

In this report, rather than searching for a theoretical definition, the Venice Commission adopted an operational approach and concentrated on identifying the core elements of the rule of law. -These are:

1. legality (supremacy of the law);
2. legal certainty;
3. prevention of abuse of powers;
4. equality before the law and non-discrimination
5. access to justice, including independence and impartiality of the judiciary and the right to a fair trial.

In order to make it possible to assess whether the principle of the rule of law is implemented in an objective, thorough, transparent and equal manner, the Venice Commission then drafted a the rule of law checklist, which it adopted in March 2016.

The rule of law checklist may be used by a variety of stakeholders: state authorities, international organisations, non-governmental organisations, scholars and citizens in general. It first addressees are the States themselves.

In the rule of law checklist, the five core elements quoted above, or benchmarks, are sub-itemised into detailed questions to assess the degree of respect for the rule of law in any given country.

- The principle of legality is at the basis of every established and well-functioning democracy. It entails the supremacy of the law, namely the fact that the State action must be in accordance with and authorised by the law. The law should establish the relationship between the international and the national law and sets out the cases in which exceptional measures could be adopted to derogate the normal regime of protection of citizens’ rights.
- Legal certainty involves the accessibility of the law. The law must be certain, foreseeable and easy to understand. Basic principles such as *nullum crimen sine*

lege/nulla poena sine lege, or the non-retroactivity of the criminal law are bulwarks of the legal certainty.

- Preventing the abuses of powers means having in the legal system safeguards against arbitrariness; providing that the discretionary power of the officials is not unlimited, and it is regulated by law.
- Equality before the law is probably the principle that most embodies the concept of rule of law. It is paramount that the law guarantees the absence of any discrimination on grounds such as race, sex, colour, language, religion, political opinion, birth, political power etc. Similar situations must be treated equally and different situations differently. Positive measures could be allowed as long as they are proportionate and necessary.
- Access to justice implicates the presence of an independent and impartial judiciary and the right to have a fair trial. The independence and the impartiality of the judiciary are central to the public perception of the justice and thus to the achievement of the classical formula: “justice must not only be done, it must also be seen to be done”
- Finally, the checklist addresses some cases in which some particular actions and decisions can hinder and weaken the rule of law. It could be the case of corruption for example, with the presence of a weak criminal system to fight bribes, grafts and misuse of public money; but also of conflicts of interest between a public office and private gains. It could also be the case of collection of data and surveillance – targeted surveillance, strategic surveillance, and video surveillance - in a time when the increasing use of information technology has made them possible to an extent which was unthinkable in the past.

The assessment of the respect for the rule of law will not merely consist of counting the right answers to the questions put in the checklist: it is intended to provide a global overview of the situation, while focusing on the respect for the most important criteria.

See: www.venice.coe.int

3. Ensuring justice – Independence and efficiency of justice

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 efficiency¹,
- 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

¹ The last report, containing data of 2012, has been made public in September 2013. The next report is expected by mid-2014.

CEPEJ Network of Pilot courts; within this framework, a court coaching programme has been made available to volunteer courts wishing to get concrete support for implementing the relevant CEPEJ tools,

- preparation of concrete tools for promoting the quality of justice, including a Handbook for organising court satisfaction surveys, a report on "*contractualisation* and judicial processes" and guidelines on the organisation of judicial maps; draft guidelines on the role of experts in judicial proceedings and guidelines on the organisation of court premises are under preparation; within this framework, a court coaching programme has been made available to volunteer courts wishing to get concrete support for implementing the relevant CEPEJ tools,
- 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 design of several other tools aimed a policy makers and justice proactioniers, such as Guidelines for a better implementation of the existing Council of Europe Recommendations concerning mediation and execution of court decisions.

More than 20 member States have indicated that they had already directly used the evaluation report of 45 judicial systems published by the CEPEJ in October 2016 to guide their reforms. This report, as well as a thematic report entitled "The use of information technology in European courts", have been widely disseminated to policy makers, justice professionals and the public. For the first time, the CEPEJ has made available an interactive database, as an innovative tool for easily obtaining detailed and comparable information on the functioning of judicial systems. The European Commission was provided by the CEPEJ with information on 26 states enabling it to prepare its "Justice Scoreboard ". Recommendations were made to improve the system of judicial data collection in Serbia.

The achievements and the methodology of the CEPEJ have been used to guide judicial reforms in many states and other beneficiaries, including through CEPEJ cooperation programmes (Albania, Azerbaijan, Croatia, Republic of Moldova, Turkey, Kosovo*, Morocco, Tunisia, Jordan). The SATURN Center has data on judicial timeframes by case categories in more than 30 states; indicators for the court case flow management have been defined for the first time on these bases. New tools for judicial time management have been developed for all member states and specific recommendations have been made for the Court of Avignon (France).

New tools are made available by the CEPEJ to improve the quality of judicial services, measure the quality of justice, drive changes towards cyberjustice, conduct satisfaction surveys for court users.

The CEPEJ was represented in 57 fora (26 States) on the functioning of justice. European standards on the role of court presidents, as well as on the quality and efficiency of the work of prosecutors, including in fighting terrorism and serious and organised crime, were developed through the opinions of the CCJE N°19(2016) and of the CCPE N°11(2016). Information related to the situation of the judiciary and judges in the member States has been updated by the CCJE, which has also formulated opinions on specific questions on the status of judges in Poland and Turkey. The situation of prosecutors in Turkey was also stressed by the CCPE.

see: [cepej](#)

4. 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 for safeguarding the status of judges in Europe and 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 15 Opinions for the Committee of Ministers. An Opinion on "the relations between judges and lawyers in judicial proceedings" 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: [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, 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 7 Opinions for the Committee of Ministers. An Opinion on prosecutors and media will be finalised soon.

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

See: [ccpe](#)

Co-operation programmes

Under its various programmes, the Council of Europe has developed a number of targeted activities in order to support CoE member States on issues relating to the proper functioning of independent justice systems, including where the monitoring procedures have revealed a need for new measures or a change in approach. Such programmes rely in particular on the CEPEJ evaluation mechanism, as well as the CEPEJ concrete tools aimed at policy makers and justice professionals. This may have come out of the judgments of the European Court of Human Rights (ECtHR), the reports of the CoE Human Rights Commissioner (HRC). Cooperation activities for the efficiency and quality of judicial systems are being developed (often within the framework of joint programmes with the European Union) in particular with Albania, Turkey and the countries of the Eastern Partnership (Armenia, Azerbaijan, Belarus, Moldova, Romania and Ukraine), as well as with the countries of the South neighbourhood (Morocco, Tunisia, Jordan).

See: www.coe.int/cepej

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

Support to national implementation of European human rights standards at the national level

The unique position of the Council of Europe to provide support to its member states to ensure the effectiveness of human rights protection at the national level, in line with the Brighton and the Brussels Declarations, has been strengthened through targeted cooperation projects. These projects are aimed at addressing the needs identified in the context of the supervision of the execution of judgments of the European Court of Human Rights by the Committee of Ministers. Past successes have led to increased confidence from donors, whether the European Union or Council of Europe member states, whose contributions have significantly increased during this last year. The relevance of cooperation projects has also led member states to increase their efforts in undertaking concrete measures in order to amend their legislation and practice to tackle issues relating to structural or general deficiencies of domestic law and practice identified by the European Court of Human Rights. However, reforms are not over once legislation is in place. Implementation is crucial as well. It is for this reason that the Human Rights National Implementation Division has taken a comprehensive approach in its work with member states, accompanying them in the process of adopting legislation in line with European standards, and subsequently, developing the capacities of those responsible for its implementation, first and foremost, legal professionals. Also, reforms are not done overnight. While it is, of course, to the member states themselves that belongs the ownership of the reforms, long-term Council of Europe support has been provided as much as possible to ensure that the results are long-lasting.

One focus of this year has been on the establishment or strengthening of effective domestic remedies, whether specifically in the context of ill-treatment committed by law enforcement bodies, in respect of excessive length of proceedings or more generally.

As such, a project has supported Bulgaria to introduce a mechanism for compensation for undue delays in civil and criminal proceedings. After the creation/assignment of the competent Bulgarian authority with the capacity to organise and provide compensation for excessive length of proceedings, the project will evaluate the efficiency of the established mechanism and propose further improvements if needed. In Serbia, the evaluation of a new remedy established as a response to excessive lengths of proceedings has led to a more comprehensive legislative reform undertaken with advice from the Council of Europe. In Turkey, two years after the introduction of individual applications to the Constitutional Court, which was achieved with the support of the Council of Europe, the Constitutional Court issued landmark decisions, notably on the length of pre-trial detention and freedom of expression, referring to the case law of the European Court of Human Rights.

Criminal justice reform has continued to be an area of support. The functioning of Turkey's criminal justice system has been assessed thoroughly and concrete recommendations for improvement were made. In Ukraine, the long-awaited reform of the prosecution service reached a milestone with the adoption of a new law in October 2014 in line with European standards. Immediate measures were also taken to address the post-Maidan events as regards effective investigations of allegations of ill-treatment and freedom of assembly.

The protection of human rights at the national level cannot be effective if those that are at the forefront, mainly legal professionals, are not fully equipped to deal with it. Many projects have therefore specifically targeted this professional group. Access to the judicial profession has been looked at in Serbia, where the Justice Academy as the "single entry point" for the judiciary has been carefully examined in an opinion following a Constitutional Court ruling on this issue. A harmonised body of case law at the national level being a pre-condition to a coherent implementation of the European Convention on Human Rights, the Council of Europe worked with courts, judicial councils and ministries of justice in Armenia, Bosnia and Herzegovina, Bulgaria, Montenegro and Serbia to achieve this aim.

As regards capacity development, the European Programme for Human Rights Education for Legal Professionals (HELP) continued its expansion. After the adoption of PACE Resolution 1982 (2014) on the need to reinforce the training of legal professionals and the Brussels Declarations, it is today the only genuine pan-European programme of legal education based on a pan-European Network of national training institutions and bar associations of the 47 member states of the Council of Europe. It has also become the comprehensive platform for all training endeavours undertaken by the Council of Europe on the European Convention on Human Rights and also beyond. This achievement is the result of HELP's methodology, with its tailor-made approach to developing and adapting to national training systems and various categories of legal professionals; the quality of its training modules, integrating the Convention perspective in national law; its approach to enhancing the capacity of national trainers, thus creating a strong sense of national ownership over the training; and its adaptation to the reality of the legal professionals' workload by relying on modern technologies. New courses were developed as a response to the societal challenges faced in Europe, such as on anti-

discrimination, hate speech and hate crime, and asylum, in cooperation with other international organisations with expertise in the respective fields.

Results were achieved when the shared responsibility between the Council of Europe and the member states was well-balanced: when, on the one hand, careful attention was paid by the Council of Europe to the national partners' needs and changing circumstances and, on the other, member states took full advantage of the support provided to them in their efforts to achieve sustainable progress in the protection of human rights at the national level.

<http://www.coe.int/t/dqi/hr-natimplement/>

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 cooperation 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.

Under the Joint Programme between the Council of Europe and the European Union on "Improving the Efficiency of the Turkish Criminal Justice System", 25 law enforcement officers have been selected to join the pool of trainers on effective investigations of ill-treatment cases, preventive measures, the fight against cybercrime, organised and terror-related crimes and corruption.

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: <http://www.coe.int/en/web/human-rights-rule-of-law/home>

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/>