

OSCE Human Dimension Implementation Meeting

Warsaw, 2-13 October 2006

Working Session 12 'Fundamental Freedoms'

Contribution of the Council of Europe

Committee of Ministers Monitoring Procedure

The Council of Europe Committee of Ministers established two distinct, though interrelated, procedures to monitor the compliance with statutory and accession commitments by Member States: i) thematic monitoring and ii) country-specific monitoring.

Thematic monitoring enables the Committee of Ministers to consider the honouring of commitments by all member States' from the standpoint of 'themes' or areas identified in advance. The themes, having special topicality at the European level and respecting the principles of non-duplication and subsidiarity, can be proposed by any member State Delegation as well as by the CoE Secretary General. The final choice of the theme is made by the Committee of Ministers. The thematic report, prepared by the Secretariat or, if necessary, by another organ or institution designated by the Committee of Ministers, should consist of an analysis of major issues within the scope of the theme and be based on the work undertaken by the existing Council of Europe monitoring mechanisms. The report should serve as a basis for the Committee of Ministers' decisions on operational follow-up, notably re-adjustment of cooperation programmes and assistance activities and/or intergovernmental work. The thematic overview is discussed *in camera* and remains confidential unless the Committee of Ministers decides otherwise. The last thematic monitoring report, issued in 2005, is of direct relevance to the OSCE HDIM working session 12, Fundamental Freedoms II, Freedom of Association (see below, Thematic Monitoring report on freedom of association).

The Committee of Ministers' country-specific monitoring procedure is applied with respect to a limited number of member States, mainly in a post-accession context. Armenia, Azerbaijan, Bosnia and Herzegovina, and Serbia and Montenegro are subject to this procedure. Similar in nature, a stock-taking of cooperation exercises has been established with respect to Moldova. The regular public reports (available on the Secretary General's Website www.coe.int/sq) cover a variety of issues related to the state of democracy and human rights in the above-mentioned countries (see below, Country-specific monitoring).

Thematic Monitoring Report on Freedom of Association

The Committee of Ministers discussed the thematic monitoring report on freedom of association on 4 July 2005. The report is composed of three parts:

- a) [Volume I](#) provides an overview of the Council of Europe's relevant legal instruments and work on major issues within the scope of the theme, including European Convention of Human Rights and analysis of the European Court of Human Rights' case law on the matter, European Social Charter and conclusions of the European Committee on Social Rights. It also covers the CoE's actions in specific fields, such as freedom of association and minorities rights, promotion of citizen's participation in political and public life, work related to NGOs and political parties.
- b) [Volume II](#) gives an analysis of the member States' legislation and practice on the matter, with reference to CoE standards and principles. It adopts a transversal approach, detects recurrent problems and pinpoints the examples of good practices. The analysis is structured around the following major areas within the scope of the theme: political sphere (creation, functioning and dissolution of political parties), labour sphere (creation, functioning and dissolution of trade unions) and civil society (creation, functioning and dissolution of NGOs and foundation, as well as more generally the civil society's role in the democratic process).
- c) [Volume III](#) contains the Secretary General's conclusions and the Committee of Ministers' decisions on the operational follow-up required to remedy the flaws found. Following the discussion of the report, the Committee of Ministers notably decided to instruct the European Committee on Legal Cooperation (CDCJ) to pursue the consideration of the possibility to elaborate a non-legal binding instrument on NGOs, in the form of a Recommendation (see Appendix I for full text of decisions).

In October 2005, by a decision of the Committee of Ministers, the report was declassified [document CM/Monitor (2005)1, Volumes I, II and III can be found at www.coe.int/cm].

Follow-up:

In the light of the Secretary General's thematic monitoring report on "freedom of association", the Committee of Ministers subsequently decided to set up a Group of Specialists on the Legal Status of Non-Governmental Organisations (CJ-S-ONG) instructed to pursue the examination of the proposal to elaborate a non-binding legal instrument in the form of a draft recommendation on the legal status of NGOs in Europe.

At its first meeting on 29-30 May 2006, the Group of Specialists on the Legal Status of Non-Governmental Organisations (CJ-S-ONG) examined the draft Recommendation on the Legal Status of Non-Governmental Organisations in Europe.

The draft [text](#), as revised by the Group, was open to public discussion until 1 September 2006 (the draft text and more information on the Group's activities can be found at www.coe.int /Legal affairs/Legal cooperation/Framework of Civil Society). The Group will continue examining the preliminary draft Recommendation at its next meeting on 27-30 November 2006.

Country-specific monitoring procedures:

Armenia's and Azerbaijan's post-accession monitoring is carried out by the Committee of Ministers' *ad hoc* Monitoring Group (GT-Suivi.AGO), composed of the Permanent Representatives of several member States. The group makes regular reviews of the two countries' democratic developments and honouring of the commitments, combining working methods such as questionnaires and *in situ* visits (generally annual). The review focuses on several 'themes' of particular concern such as the functioning of democratic institutions, constitutional and legislative reforms, the functioning of judicial and penitentiary systems, respect of fundamental freedoms, etc. Based on GT-Suivi.AGO's suggestions, the Committee of Ministers makes conclusions and recommendations to the both countries.

[Latest documents available on the Committee of Ministers' website www.coe.int/cm: GT-Suivi. AGO, 7th Progress Report , [CM\(2006\)100 final](#)].

Post-accession monitoring with respect to Bosnia and Herzegovina (set up in April 2002) and Serbia and Montenegro (April 2003) consists of a regular review of progress and difficulties encountered by these countries in fulfilling their accession commitments.

Since April 2005, the monitoring procedure with respect to Bosnia and Herzegovina became bi-annual. These procedures are closely linked with the follow-up of implementation of targeted post-accession co-operation programmes. The latest reports acknowledge that both countries have complied with a number of the accession commitments. However, further efforts should be pursued by Bosnia and Herzegovina to complete the constitutional, judiciary, police and educational reforms, to strengthen the cooperation with ICTY, to finalise the exercise of compatibility of legislation with the ECHR and to elaborate a coherent strategy for national reconciliation.

The latest report, on Serbia and Montenegro, dated January 2006, stresses that cooperation with the ICTY, constitutional drafting, reform of the judiciary, implementation of legislation/reforms provided in the commitments and protection of minorities rights remain the fields in which progress is still expected.

[Latest documents available on the Secretary General's website www.coe.int/sq: Bosnia and Herzegovina: [SG/Inf\(2006\)12rev](#); Serbia and Montenegro: [SG/Inf\(2006\)01](#)].

A regular monitoring procedure with respect to Georgia has been established in February 2003 in application of the Committee of Ministers' 1994 Declaration on compliance with the commitments and following the CoE Parliamentary Assembly's Recommendation (1580)2002 on the situation in Georgia. The exercise is currently focused on the following priority areas: i) functioning of democratic institutions, ii) functioning of judiciary and law-enforcement and iii) fight against corruption and organised crime. An assessment of the progress achieved and difficulties encountered is taken into account when adjusting CoE cooperation with Georgia.

[Latest document available on the Secretary General's website www.coe.int/sq: [SG/Inf\(2006\) 8 final](#)].

Regular stock-taking of the situation in Moldova has been set up in February 2004, to

identify how co-operation programmes could be implemented best. The exercise is focused on the following priority areas: i) adjustment of Moldovan legislation with Council of Europe standards, ii) freedom of media and iii) implementation of the CoE/EC Joint programme. Similar modalities apply to Ukraine, and in June 2005 the Committee of Ministers endorsed the CoE Action Plan on cooperation, based upon the fulfilment of Ukraine's statutory and specific obligations as a CoE member State.

[Latest documents available on the Secretary General's website www.coe.int/sq: Moldova: SG/Inf(2005)20rev].

Annex I

DECISIONS ON FOLLOW-UP ACTION TAKEN BY THE COMMITTEE OF MINISTERS (CM/Monitor(2005)1 Volume III)

In the light of the report and discussions, the Committee of Ministers, at its 931st meeting (*in camera*) of 4 July 2005, took a number of decisions in order to ensure concrete follow-up action. The Deputies:

“1. invited member states to make full use of Council of Europe co-operation programmes in the field of freedom of association and civil society and disseminate information on possibilities available to other interested partners, such as mainly NGOs and instructed the Secretariat to consider ways of enhancing freedom of association in elaborating the draft programme of activities and different country-specific programmes;

2. instructed the European Committee on Legal Co-operation (CDCJ), in consultation with the Steering Committee for Human Rights (CDDH) and the Conference of INGOs enjoying participatory status with the Council of Europe, to pursue its examination of the proposal to elaborate a non-binding legal instrument in the form of a Recommendation on NGOs, taking into account the “Fundamental Principles on the Status of NGOs in Europe” and the present thematic report on “freedom of association”;

3. invited member states, when drafting, amending or applying relevant legislation, to take due account of:

i. the European Court of Human Rights' case-law on Article 11 of the ECHR;

ii. Recommendation Rec(2003)4 of the Committee of Ministers on common rules against corruption in the funding of political parties and electoral campaigns; and

iii. the Venice Commission Guidelines on prohibition and dissolution of political parties and analogous measures (CDL-INF(2000)1), on financing of political parties (CDL-INF(2001)8) and on legislation on political parties (CDL-AD(2004)7 rev.);

4. decided to ensure wide dissemination among different state bodies and political parties:

i. of the standards and principles on freedom of association enshrined in the European Convention on Human Rights and of the related case-law of the European Court of Human Rights;

ii. of the relevant standards and principles on freedom of association contained in the European Social Charter and of the conclusions of the European Committee of Social Rights.”