



OSCE Human Dimension Implementation Meeting

Warsaw, 28 September – 9 October 2009

Working Session 1 : 'Rule of Law'

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).

Follow-up to 28th Ministerial Conference (Lanzarote, 2007)

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

At the outcome of the Conference, the Ministers adopted two resolutions. Further to Resolution n°1 on access to justice for migrants and asylum seekers, the Council of Europe's European Committee on Legal Co-operation (CDCJ) commissioned in 2008 an expert to prepare a feasibility study on access to justice for migrants and asylum seekers. This study identified obstacles in accessing justice and effective remedies in current systems, concluding that there is a need for and the feasibility of an additional

Council of Europe action in this field, more precisely a Council of Europe instrument focused on the specific issue of access to justice for migrants and asylum-seekers. A Group of Specialists will in 2010 be entrusted with the task of preparing such a draft instrument and tackling this difficult question, paying particular attention to unaccompanied minors and separated children.

Further to Resolution n°2 on child friendly justice, Council of Europe Guidelines on child friendly justice are currently being drafted by a Group of Specialists. The Guidelines will be a practical guide for Member States, assisting them in adapting their judicial system to the specific needs of children in all spheres of justice (civil, administrative and criminal) on the basis of internationally agreed standards. The Group, of multidisciplinary composition including judges, prosecutors, psychologists, police officers, social workers, as well as representatives of the governments of the member states, held its first meeting in Strasbourg on 16-17 April 2009. Two more meetings are planned on 28-30 September and on 8-10 December 2009, following which the final guidelines should be adopted by the Council of Europe's Committee of Ministers in 2010. In addition, the consultation of various stakeholders on the draft text will be ensured throughout the drafting process. A hearing with leading international organisations and NGOs specialising in children's rights will be organised on 7 December 2009 and possible ways of ensuring direct and meaningful participation of children in the drafting process are currently being examined.

2009 Ministerial Conference

The 29th Council of Europe Conference of Ministers of Justice was held in Tromsø on 18-19 June 2009. The theme was: "Breaking the silence – united against domestic violence".

The Ministers underlined that domestic violence has long been met with public and political silence, being barely visible in the legal system and seldom recognised as a serious crime and violation of fundamental human rights. The scene of domestic violence is behind closed doors. It mostly involves intimate partners and former partners, and also takes place within same sex relationships. While men as well as children can be affected, most of the victims of domestic violence are women.

The Ministers examined measures on how best to combat domestic violence through legislation and other measures. They underlined the necessity to promote a common approach to breaking the silence, and supporting and empowering the victims. In this context, the Ministers welcomed the on-going work undertaken by the Ad Hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) and called for a speedy completion of the work on a new convention.

The Ministers also marked the 50th anniversary of the European Convention on Mutual Assistance in Criminal Matters and welcomed the fact that this convention remains a living instrument which has been ratified by all member states of the Council of Europe and by Israel. They called on the Council of Europe to further develop practical measures in order to render international cooperation in criminal matters more effective.

The Ministers reiterated their support for rule of law-related activities of the Council of Europe in the civil, penal and administrative fields. They called for better coordination of these activities and a regular review in member states of the different aspects defining a

state governed by the rule of law. Such a review should be carried out by making better use of the existing bodies and mechanisms, in particular on the basis of the case-law of the European Court of Human Rights, the execution of its judgments, the findings of monitoring bodies and contributions by the relevant steering committees and advisory bodies. Its aim would be to target better technical co-operation and the development of standards. They invited the European Union to cooperate with the Council of Europe in this work, notably in the context of existing or possible future rule of law evaluation activities.

At the end of the Conference, the Ministers adopted three resolutions:

1. on preventing and responding to domestic violence;
2. on mutual assistance in criminal matters;
3. on Council of Europe action to promote the rule of law.

Resolution No. 3 called for better coordination of rule of law-related activities of the Council of Europe in the civil, criminal and administrative fields and a regular review in Member States of the different aspects defining a state governed by the rule of law. Such a review should be carried out by making better use of the existing bodies and mechanisms, in particular on the basis of the case-law of the European Court of Human Rights, the execution of its judgments, the findings of monitoring bodies and contributions by the relevant steering committees and advisory bodies. Its aim would be to target better technical co-operation and the development of standards.

All Resolutions will be implemented within the framework of the CoE's activity programme.

Good administration

The Council of Europe will shortly start preparing a revised and updated version of the Handbook "The administration and you", first published in 1996, which deals with principles of administrative law (both substantive and procedural) concerning the relations between administrative authorities and private persons.

This update will *inter alia* enable to include in the revised handbook a reference to the Recommendation (2007)7 on good administration which aims to strengthen the legal framework of good administration as an essential element of good governance and improve the functioning of public administration and relations between the administration and individuals, promoting an area of common legal standards throughout Europe on the basis of a consolidated model code of good administration.

1. The European standards and their implementation

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

measures could reduce the number of requests based on the Article 6 of the European Convention on Human Rights.

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

In 2006 the CDCJ agreed that it would be important to update the Recommendation No. R(94)12 on the independence, efficiency and role of judges . This activity falls directly into the framework of the Council of Europe project "Improving the organisation of independent judicial systems". A Group of Specialists on the independence, efficiency and role of judges (CJ-S-JUST) was set up in January 2007 and proposed amendments to this recommendation in the light of new ideas and practices concerning judicial services and their functioning in Europe. Given the constitutional dimension of the issues at stake, the work was pursued in 2009 by an enlarged Group, the Group of Specialists on the judiciary (CJ-S-JUD), reflecting the variety of the judicial systems of the Council of Europe member states. The Group will submit a draft Recommendation to the CDCJ in 2010.

On the basis of these norms and standards, the Council of Europe has developed its co-operation programme to improve the organisation of independent judicial systems and to strengthen the role and training of judicial professions. The Programme² is designed to help beneficiary countries, in particular from South-Eastern Europe and the CIS countries, to press ahead with their institutional, legislative and administrative reforms.

See: www.coe.int/justice

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

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

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

of the this request was Recommendation (2004)6 on the improvement of domestic remedies.

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

Notwithstanding these efforts, the problem of excessively long judicial proceedings has persisted. In June 2009, the Committee of Ministers therefore instructed the CDDH "to draft a recommendation and supporting documents on existing effective domestic remedies concerning excessive length of proceedings, by giving examples of good practices, in particular those already mentioned by the European Court of Human Rights in its case law." A Committee of Experts on effective remedies for excessive length of proceedings (DH-RE) was created and will hold two meetings in 2009. A Recommendation should be adopted by the Committee of Ministers in early 2010.

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 efficiency³,
- the concret knowledge of lengths of proceedings in the member states so as to propose pragmatic tools and measures to improve judicial time management, through the work of the SATURN Centre, which is due to evolve towards a genuine permanent European observatory of judicial timeframes, with the support of the CEPEJ Network of Pilot courts,
- preparation of concrete tools for promoting the quality of justice,
- the European Day of Justice, co-organised in all European countries with the European Commission, including the European Prize of innovative practice contributing to the quality of justice: "The Crystal Scales of Justice",
- the adoption of Guidelines for a better implementation of the existing Council of Europe Recommendations concerning mediation and execution of court decisions.

see: www.coe.int/CEPEJ

3. Strengthening the judicial professions

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

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

Reinforcing the independence and impartiality of judges

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

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

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

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

See: www.coe.int/ccje

Co-operating with prosecutorial systems

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

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

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

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

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

See: www.coe.int/ccpe

Supporting judicial training

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

See: www.coe.int/lisbon-network

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 enhance ECHR effectiveness at 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).

26 activities were organised in 2008 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 14 of these activities planned in 2009.

20 activities were organised in 2008 to tackle problems with the implementation of general measures in specific cases through targeted assistance activities. In 2009 there were 13 such activities planned which were also devoted to strengthening the awareness of the role of the Government Agents (GA).

9 activities were held in 2008 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 12 planned in 2009.

In addition, there has been one activity in 2008 to improve the access to domestic remedies following pilot judgments of the Court and monitor the practice on pilot judgments done in Strasbourg: a publication in the field of human rights and legal affairs. There were 4 activities conducted in 2009.

The highlight of the year 2008 has been an important reflection on the role of the GA in ensuring human rights protection which was carried out in the framework of a multilateral seminar organised under the Slovak Chairmanship of the Committee of Ministers in Bratislava, on 3-4 April 2008.

In the field of compatibility, the completion of the Bosnian compatibility study has enabled the fulfilment of an important post-accession commitment in Bosnia and Herzegovina.

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

Support for civil society and non-judicial human rights

23 activities in 2008 sought to increase the ability of civil society and Ombudsmen/national human rights institutions to lobby for the inclusion of human rights in national policies and to advocate the effective protection of human rights but there were 135 of them planned in 2009, 126 of which only to improve the capacity of civil society structures to apply European human rights standards.

Civil society representatives were trained on how to present their concerns to the authorities using arguments based on the ECHR substantive and procedural provisions. Specific capacity-building support was provided jointly by the CoE and the ODIHR to Armenian NGOs with a view to increasing their ability to monitor freedom of assembly.

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 2008,

ECHR training was carried out in 16 countries and in Kosovo*, involving 12 693 participants. In 2009, 159 activities were held in 13 countries and in Kosovo*.

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

The European Programme for Human Rights Education for Legal Professionals (the "HELP" Programme) contributed substantially to improving the skills of national training institutions as regards the incorporation of the ECHR into initial and continuous training for judges and prosecutors. The HELP Programme came to an end on 31 December 2008. Its results are since then incorporated into the capacity-building training activities, in particular its website and the training methodology.

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

Assistance and awareness raising in the field of media (until September 2009)

Activities focused on legislative assistance to member States and capacity building in the media field in Albania, Bosnia and Herzegovina, Moldova, Montenegro, Serbia, the South Caucasus and Ukraine. 93 activities were organised in 2008 and 90 were planned in 2009.

The activities aimed at empowering the stakeholders through the transfer of skills and knowledge to promote media freedom in their countries in line with CoE standards. Particular attention was devoted to reforming the regulatory framework for the media.

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

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

67 activities were organised in 2008 to reinforce judicial organisations and institutions. There were 13 activities for the reinforcement of institutions guaranteeing the independence and quality of judges. 11 activities were set up to improve the enforcement of court decisions and develop other extra judiciary means. 81 activities were conducted to reinforce training institutions for judges and court staff. 2 activities aimed to improve the training institution for prosecutors of the Russian Federation. 8 activities were organised to improve the role and training of lawyers and notaries and ensure a legal aid system is fully operational. There were respectively 61, 8, 6, 30 and 9 of these activities in the different fields mentioned in 2009 (this year, the reinforcement of training institutions for judges, prosecutors and court staff were merged).

Activities have been carried out to improve the enforcement of judicial decisions in line with the case law of the ECtHR, raise the awareness of the specific requirements related to the appointment, dismissal and salaries of judges and prosecutors, and develop the formal role and status of the lawyers' and notaries' professions.

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

Capacity-building for law enforcement officials

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

12 activities were organised in 2008 in order to promote CoE standards on human rights and ethics for law enforcement officials through targeted assistance programmes. 19 activities were set up for senior and middle ranking law enforcement officers to use European standards in their daily work, in particular the ECHR, the European Code of Police Ethics and the findings of the CPT. In 2009, 5 activities took place, all related to the second result.

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

Support for national prison systems

22 activities were organised in 2008 to help the member States undertake concrete measures aimed at improvement the prison management systems. There were 30 activities to ensure that the management and operational staff in prison are able to use European standards in their daily work, in particular the ECHR, EPR and the findings of the CPT. In 2009 there were respectively 33 and 47 of such activities planned in the two fields.

The objective of the training part of the assistance activities has been that, in the near future, the national training capacities in respect of human rights and CPT standards and the EPR would be self-sustainable.

Legal expertises and assistance in drafting elements of a future national strategy on prison reform in "the former Yugoslav Republic of Macedonia" were based on CoE standards on sanctions policy, imprisonment and rehabilitation, which could assist the national authorities in the preparation of an overall national strategy on prison reform.

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