

OSCE Human Dimension Implementation Conference

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Working Sessions 12 and 13

Contribution of the Council of Europe

**THE COUNCIL OF EUROPE AND
THE RULE OF LAW**

Cooperation programme

The Human Rights National Implementation Division has continued to support the implementation of the European Convention on Human Rights (the Convention) and other European human rights standards at the national level in all Council of Europe member states through cooperation programmes in line with the 2012 Brighton and 2015 Brussels Declarations. It has provided a combination of legislative expertise and institutional development as well as capacity building support, paying attention to impact and aiming at sustainability, both essential and complementary aspects of ensuring a better protection of human rights at the national level. Through the projects, the Division has been disseminating good practices and contributed to raising the standards of human rights observance in Europe.

In 2016, the Division was responsible for 26 projects and a budget of nearly €35 Mio. Most of the funding came from extra-budgetary resources, mainly from the European Union through joint programmes or larger facilities, such as the Partnership for Good Governance (initially called “Programmatic Cooperation Framework”) targeting Eastern Partnership countries and the Western Balkans Horizontal Facility; voluntary contributions from Council of Europe member states, such as Denmark, Norway and the United Kingdom; and the Human Rights Trust Fund. The Council of Europe’s own budget of a total amount of €500 000 was used for countries where smaller-scale interventions could deliver an impact; to respond to urgent requests; and for the core activities of the European Programme for Human Rights Education for Legal Professionals, better known as HELP – notably the Network, the Consultative and Editorial Boards.

Large-scale projects were implemented in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Georgia, Kosovo*, Moldova, Montenegro, Russian Federation, Serbia, “The former Yugoslav Republic of Macedonia”, Turkey, Ukraine. Furthermore, EU member states were specifically targeted through a joint EU/CoE project, “HELP in the 28”. In addition, a number of activities took place in Belarus, notably a conference on the abolition of the death penalty, organised in cooperation with the Directorate of Political Affairs.

2016 was marked by continued endeavours towards removing obstacles to effective implementation of the Convention at the national level. In particular, support was provided to national courts to ensure a coherent interpretation of the case law of the Strasbourg Court, leading to a harmonised body of national case law. This has been achieved through the development of innovative mechanisms and tools in Bosnia and Herzegovina, Georgia, the Russian Federation, and Serbia, such as advisory opinions issued by high courts, special functions conferred to case law/human rights departments, enhancing access to the case law through modern databases, harmonisation panels, as well as modern judicial training techniques on the ECHR and Strasbourg case law undertaken under the HELP umbrella. Focus was also placed on strengthening judicial and non-judicial effective remedies (individual application before the Constitutional Court in Montenegro and Turkey; NPM and amicus curiae functions of Ombudsperson institutions in Georgia, Kosovo* and Montenegro; anti-discrimination actions of Ombudsperson institutions and equality bodies in Albania and Moldova). Reform of the criminal justice system was pursued in Moldova and Ukraine. Dialogue with the judiciary was enhanced in the Russian Federation notably through “HELP in Russia”, and in Turkey through an EU/CoE joint project on freedom of expression.

In addition, new tools were developed to review the progress of judicial reforms, as well as to assess the state of affairs in more concrete areas, such as pre-trial detention. A Progress Review Methodology of the Justice Sector Reform in Ukraine was developed under the EU/CoE Joint Programme “Consolidation of Justice Sector Policy Development in Ukraine” to provide methodological guidance and a comprehensive tool to national stakeholders for the assessment of the progress of justice sector reforms in the country. A unique, new step-by-step methodology aimed at in-depth assessment of pre-trial detention practices by national stakeholders was developed in Georgia through the CoE/EU Programmatic Cooperation Framework.

The European Programme for Human Rights Education for Legal Professionals (HELP) consolidated its position as the driving force in Europe when it comes to legal education on the Convention and fundamental rights for judges, prosecutors and lawyers. The HELP platform has grown to 18,000 registered users. Its approach and tools have continued to contribute to fostering legal professionals’ sensitivity to human rights issues that may arise in any legal area and to building their capacity to identify such issues at an early stage, thus creating a so-called “human rights reflex”.

The annual conference entitled “HELP, leading the way to case law harmonisation” was opened by the Secretary General, Thorbjørn Jagland, who highlighted the importance of HELP in the efforts of the CoE to “sow the Convention into [member states’] national fabric”. The HELP Guidebook on Human Rights training methodology for legal professionals was launched during the conference.

While being the only genuinely pan-European Programme of legal education on human rights, HELP has adopted a regional/country-specific approach to be more effective, particularly when working in complicated contexts. The flexibility of the HELP methodology has allowed its work to be tailored in order to meet the expectations and needs of partners. Three country and region specific projects were implemented in the EU, in the Western Balkans and Turkey and in the Russian Federation. As a result, new courses were developed and implemented on topical issues such as asylum and the Convention, data protection, the right to integrity of the person, reasoning of judgments in criminal matters and child-friendly justice.

In parallel, the work of the Division on case law harmonisation was boosted in 2016 by the growing interest of national judiciaries in benefitting from the Council of Europe's support in that area. Some innovative mechanisms and tools have been established and tested in a number of member states tested through the projects implemented by the Division: advisory opinions issued by high courts, special functions conferred to case law/human rights departments of higher courts, enhanced access to the case law through modern databases, creation of harmonisation panels, modern judicial training techniques on the Convention and the Strasbourg Court case law.

For example, in Serbia, significant achievements were accomplished. In particular judicial dialogue was fostered among courts and new responsibilities were allocated to the court practice department(s) of courts of different levels. In addition, capacity building on human rights for judges, judicial associates and court advisors and institutional capacity development of law faculties to deliver fully-fledged education programmes on human rights to students in order to improve their drafting and reasoning skills was delivered under the HELP umbrella. As a result, in its Judgment, *Cupara v. Serbia*, the Strasbourg Court found no violation of Article 6 because national legislation in Serbia, reformed with the support of the Council of Europe, provided for "machinery capable for overcoming... inconsistencies [in judicial practice], namely referring to the action plan aimed at ensuring the general harmonisation of case-law throughout the Serbian judicial system adopted by the Supreme Court of Cassation in April 2014".

Progress was also achieved in many member states with respect to criminal justice reform, including through a comprehensive review in close consultation with the Council of Europe, of national legislation (i.e., laws on the functioning of the Prosecutor's Offices, of the Criminal and Criminal Procedure Codes, on reform of the Police, establishment of the National Preventive Mechanisms (NPMs)). For example, in Montenegro, enhanced capacities of the NPM department of the Ombudsperson's Office led to an increase in recommendations related to legal amendments as well as the conditions and treatment of the persons deprived of their liberty. In Ukraine, the improved application of the new Criminal Procedure Code incorporating procedural safeguards against ill-treatment, including early access to a lawyer, led to an enhanced protection of human rights. The implementation of the newly adopted law on the State Bureau of Investigations was commenced, enabling the creation of an independent mechanism for investigation of ill-treatment cases. In parallel, strengthened operational capacities of the NPM Department of the Ombudsperson's Office enabled a more efficient implementation of the recommendations provided on the conditions and treatment of persons deprived of their liberty.

The Division was also instrumental in supporting national effective remedies in line with Article 13 of the Convention. For examples, it pursued its efforts to strengthen the system of individual application to the Constitutional Court of Turkey, which had been established with Council of Europe's support, and as a result of which the Strasbourg Court had found that the procedure before the Constitutional Court of Turkey afforded, in principle, an appropriate mechanism for the protection of human rights and fundamental freedoms (*Uzun v. Turkey*, application no. 10755/13). The Project adapted to post-coup attempt circumstances by: (i) including the new Regional Courts of Appeals in its activities, (ii) expanding its training activities to new judges, and (iii) bolstering its support to the Constitutional Court, which is now facing a huge increase in its workload, over 70.000 individual applications having been received in the aftermath of the coup attempt. In the recent *Zihni* and *Mercan* cases, The Strasbourg Court held that the current

situation in Turkey did not dispense applicants from the requirement to exhaust domestic remedies, holding that the arguments submitted at that point were not such as to cast doubt on the effectiveness of the remedies, especially that of an individual application to the Constitutional Court (*Mercan v. Turkey*, application no. 56511/16; and *Zihni v. Turkey* (application no. 59061/16)).

The last area in which the Division provided support has been on anti-discrimination. It has therefore provided, beyond its work on legislation and development of strategies, support to National Human Rights Institutions to improve the capacity of their staff, to strengthen their capacities in key thematic areas (such as combatting ill-treatment, anti-discrimination, data protection, etc.), to improve communication and cooperation between different NHRIs and to build institutional frameworks for such cooperation. As a result, three regional offices of the Albanian Commissioner for the Protection from Discrimination have been opened, allowing victims of discrimination to file complaints easily. In Georgia, the impact of the Public Defender's Office (PDO) actions relating to the fight against intolerance, the protection of vulnerable persons, the protection of social rights and the fight against ill-treatment has been reinforced. Expert Opinion on draft amendments to the Law on PDO was issued including a number of recommendations for improvement in accordance with international standards.

A Memorandum of Co-operation was signed between the PDO and the Supreme Court to reinforce PDO's capacity to provide guidance on human rights issues to national judicial institutions through the use of *amicus curiae*. Human Rights training curricula were developed for the Human Rights School of the PDO to provide training for various groups of professionals; and capacities of more than 200 staff members of PDO were enhanced. In addition, the capacities of the prosecution service and judiciary in Georgia were strengthened to better deal with discrimination cases. In Montenegro, the Ombudsperson's Office attained an historically high efficiency rate in its processing of citizens' complaints, with more than 95% of cases being resolved within a calendar year. Enhanced efficiency and substantive improvements in applying human rights standards in the Ombudsperson's decisions, notably in reference to the Strasbourg Court's case law, strongly contributed to increased public confidence in the Ombudsperson's Office. This was demonstrated by the continuous increase in the number of citizens' appeals as well as by way of independent public opinion polling, which positioned the Ombudsperson's Office as the top national public institution in the fight against discrimination (51% respondents quoted the Ombudsperson's Office as significantly contributing to the fight against discrimination) ahead of governmental institutions, Parliament and the courts.

The tremendous work accomplished by the Division could not have been achieved without a very dedicated team composed of 80 staff members of 35 nationalities, based in Strasbourg and 13 of the field offices of the Council of Europe.

See:

HELP: <http://help.elearning.ext.coe.int/>