

OSCE Human Dimension Implementation Meeting

Warsaw, 29 September – 10 October 2008

Working Session 1 : 'Rule of Law'

Contribution of the Council of Europe

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

The Swedish Chairmanship to the Council of Europe has set as one of its priorities the examination of the notion of the Rule of Law in the Council of Europe. **To that end it has proposed to develop** a Council of Europe strategy to reinforce the promotion of the rule of law and it has launched a discussion within the Committee of Ministers on "how full use can be made of the Council of Europe's potential in enhancing the rule of law".

The effective, efficient and modern operation of the judicial systems in its Member States remains an issue of particular importance to 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 identified problems and promoted common solutions to improve access to justice for vulnerable groups, in particular migrants and asylum seekers, and children. Massive flows of migrants and asylum seekers pose an unprecedented challenge for Europe, creating tensions as well as new opportunities. This vulnerable group needs special protection and should be entitled to

exercise their fundamental rights like any other person, regardless of their nationality or status. Focus was on the rule of law and respect for human rights while proposing solutions to the difficulties this group encounters. During the same event, the European Ministers also examined the issue of access to justice for children, including children in conflict with the law. The child-friendly dimension of judicial systems and how children actually access justice was assessed, taking into consideration inter alia the requirements of the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and the measures laid down in the European Convention on the Exercise of Children's Rights.

At the outcome of the Conference, the Ministers adopted two resolutions. As a direct follow-up to Resolution n°1 on access to justice for migrants and asylum seekers, a feasibility study concerning the drafting of a legal instrument on access to justice for migrants and asylum seekers is currently underway. Depending on the outcome of the feasibility study, a legal instrument will possibly be drafted by 2010 with a view to proposing solutions to enhance access to justice to migrants and asylum seekers.

Further to Resolution No. 2 on child-friendly justice, European Guidelines on Child-friendly Justice will be prepared. The ultimate objective is to produce comprehensive ground breaking Guidelines on child-friendly justice, which assist member states in ensuring that children have child-friendly access to justice. The Guidelines will serve as a practical tool for member states assisting them in adapting their judicial system to the specific needs of children. The Guidelines will use existing international and regional instruments as a base and will indicate how their provisions can be best implemented. New standards will be developed in areas where there are legal gaps and existing best practices will be presented. Important references to the relevant case-law of the European Court of Human Rights will also be given. The Guidelines will serve as a practical guide for the national legislator, policy makers and users in paving the way for children who for whatever reason have to have access to justice.

This project is being carried out under the leadership of the European Committee on Legal Cooperation (CDCJ) and in co-operation with the European Committee on Crime Problems (CDPC), the Steering Committee on Human Rights (CDDH) and the European Commission for the Efficiency of Justice (CEPEJ). Four preliminary reports have been drafted by consultants providing a check-list of situations where children are brought into contact with the law in all spheres of the judicial system (civil, administrative, criminal, basic human rights) and at all stages (before, during and after proceedings). The reports also identify gaps and lacunas in existing standards and practices and propose solutions to enhance the place and voice of the child in justice.

This project is also being implemented in co-operation with the transversal programme "Building a Europe for and with children" of the Council of Europe which was launched under the Action Plan which was adopted at the Warsaw Summit of the Council of Europe (2005). The Conference "Building a Europe for and with children - Towards a strategy for 2009-2011" held in Stockholm on 8-10 September 2008 offered the possibility of a thematic seminar on child-friendly justice where the conclusions of the Council of Europe consultants' reports were presented. Discussions led during this seminar contributed to identify a number of core principles and examples of good practice, thus paving the way for the work of the future Group of Specialists which will draft consolidated guidelines in 2009.

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 towards a better functioning of the systems upstream 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 European Committee on Legal Co-operation (CDCJ) agreed that it would be important to update the Recommendation N°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 should be pursued in 2009 by an enlarged Group of Specialists (CJ-S-JUD) reflecting the variety of the judicial systems of the Council of Europe member states and will be submitted to the CDCJ.

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. They chiefly involve working with government authorities in the following main directions:

¹ This Recommendation is being studied in view of possible updatings.

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.

Legal Framework

- **constitutional framework and**
- **drafting of relevant legislation to guarantee the independence of the judicial power**

Capacity building

- **capacity building of key institutions such as courts, judicial training institutions, law faculties**

Training

- **training of judges, prosecutors and other judicial staff, as well as other legal professions such as lawyers, notaries and bailiffs.**

See: www.coe.int/justice
www.coe.int/admin

2. Improving the organisation of judicial systems

Improving the efficiency of justice

The **European Commission for the efficiency of justice (CEPEJ)** aims to improve the efficiency and functioning of the justice systems of member States, thereby generating increased confidence of the citizens in justice, preventing appeals to the ECHR based on Article 6 and enabling a better implementation of the Council of Europe's relevant instruments. 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,
- an ambitious Framework Programme: "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe" which is being developed into concrete tools and measures, with the support of the CEPEJ Network of Pilot courts,
- preparation of concrete tools for promoting the quality of justice as well as for measuring and controlling judicial timeframes,
- the European Day of civil Justice, co-organised in all European countries with the European Commission, including the European Prize of innovative practice contributing to the quality of civil justice: "The Crystal Scales of Justice".

Mediation

CEPEJ will adopt before the end of 2007 Guidelines for a better implementation of the existing Council of Europe Recommendations concerning mediation in civil, family, administrative and criminal matters on a basis of a general analysis of the impact of these recommendations in the member states.

see: www.coe.int/CEPEJ

3 The next report, containing data of 2006, will be made public in 2008.

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 finalised nine Opinions for the Committee of Ministers. An Opinion on the mission, membership, resources and powers of Councils for the Judiciary 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. 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, European Conference of Judges were held in Strasbourg (November 2003) on “Early settlement of disputes and the role of Judges”, in Krakow, Poland (25 - 26 April 2005) on “Justice and Media” and in Rome (26-27 March 2007) on “Which Council for Justice?”.

See: www.coe.int/ccje

Co-operation programmes

Under its various programmes, the Council of Europe is developing a number of assistance activities in order to help the countries with their reform of the judiciary system. Accent is put on the strengthening of the independence of the judiciary, improving the efficiency of justice, access to justice, raise public trust in the national systems, develop alternative ways of solving disputes and fight against corruption. Particular importance is given to a better quality of judge’s work, their remuneration and a transparent system for their appointment and dismissal.

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 European Committee on Crime problems (CDPC) on difficulties concerning the implementation of Recommendation Rec. (2000)19, to promote the implementation of this recommendation, and to collect information about the functioning of prosecution services in Europe. Given the success of the CPGE, the CCPE has also been given the task to continue the organisation of conferences on topics of common concern to public prosecutors.

The “**Co-operation programme to strengthen the Rule of Law**” is designed to foster direct contact between prosecution services in the member states. It centres on the training of prosecutors and reforming relevant legislation on the organisation of the prosecution system.

See: www.coe.int/prosecutors

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.

The Council is supporting its Member States to **set up or reform training structures for judges** (e.g. setting-up and development of judicial training schools in Albania, Bosnia and Herzegovina, Georgia, Moldova, Romania, Kosovo - Serbia and Montenegro -, Ukraine, and co-operation with the Academy of Justice in the Russian Federation).

See: www.coe.int/judges
www.coe.int/legalprof

Enhancing the role of lawyers

The Council of Europe also helps to harmonise the rules on lawyers, who play a key role in safeguarding the right to a fair trial. Relevant here is **Recommendation Rec. (2000) 21 on the freedom of exercise of the profession of lawyer** (general principles on the legal training of lawyers and their entry into the profession, professional standards, the role and duties of lawyers, disciplinary proceedings and access for everyone to lawyers).

In the context of its “**Co-operation programme to strengthen the Rule of Law**”, the Council of Europe is working with a number of countries (e.g. Albania, Moldova, South

Caucasus, as well as other countries in South-Eastern Europe) on bar reform and the training of lawyers.

Representatives of the bar associations of member states meet to discuss inter alia the role and responsibilities of lawyers in a democratic society. In 2001 the Council of Europe set up the Regional Council of the Bars (RCB) of South-Eastern Europe (SEE) to support the organisation of the profession and develop regional training. A Common Training Centre (CTC) was created in 2003 in Ankara. Under this framework, it is for example foreseen to organise the Third Training Session of the Common Training Centre in the last trimester of 2007.

Another multilateral initiative was launched in 2007, aimed at selected countries of the CIS (South Caucasus – Armenia, Azerbaijan and Georgia –, as well as Moldova and Ukraine) It was the first time that the Council of Europe gathered representatives from Bar Associations from that region whose transition processes directly translate into the legal profession. In most of these countries, a new law on advocacy has been adopted (with the exception of Ukraine), or amended again, and new professional bodies for the lawyers' representation have been formed. This multilateral initiative, organised in co-operation with the Czech Bar Association and held in Prague on 27-31 March 2007, provided a forum for the Bar Associations to exchange experience and views with each other, as well as with the hosting Bar from a country which itself had undergone significant reform and emerged with an independent and self-governing lawyers' organisation.

Further and inter-related with the legal profession, the Council of Europe also has a component in its co-operation programme in the field of free legal aid, with the aim of assisting the member states to set up or reform their legal aid systems. Access to justice for all flows directly from Article 6 of the European Convention on Human Rights and member states have the obligation to ensure that an effective and functioning legal assistance system exists in their countries, whether it be managed directly by bar associations or by other, autonomous bodies. The most relevant Committee of Ministers instruments here are: **Resolution Res (76) 5 on legal aid in civil, commercial and administrative matters**, **Resolution Res (78) 8 on legal aid and advice**, **Recommendation Rec (81) 7 on measures facilitating access to justice and Recommendation Rec (93) 1 on effective access to the law and to justice for the very poor** (in addition to **Recommendation Rec (2005) 12 containing a transmission form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid (ETS No. 092) and its Additional Protocol (ETS No. 179)**). Co-operation and assistance activities in this area are being conducted together with a number of countries (such as Albania, Bosnia and Herzegovina, Croatia, Moldova, South Caucasus, Ukraine).

see: www.coe.int/lawyers

Enhancing the role of Enforcement agents

Enforcement agents play a fundamental role in enforcing court decisions and are also the focus of specific co-operation activities in particular as regards their role, remuneration, working conditions, status and training. Of particular relevance are here the following Committee of Ministers instruments: **Recommendation Rec (2003) 16 on the execution of administrative and judicial decisions in the field of administrative law** and **Recommendation Rec (2003) 17 on enforcement**. Within the framework of its

“Co-operation programme to strengthen the Rule of Law”, the Council of Europe supports the practices and procedures of enforcement in central and eastern European countries (e.g. Albania, Armenia, Croatia, Georgia, Moldova, Russia, Serbia and Montenegro and Ukraine). It also continues to encourage the training for bailiffs (e.g. Russian Federation, Ukraine).

Enhancing the role of Court registrars

Court registrars play a major administrative role in the judicial system. The relevant Council of Europe text is Recommendation Rec (86) 12 concerning measures to prevent and reduce the excessive workload in the courts, which states that member governments should gradually reduce the number of non-judicial tasks performed by judges and assign them to other officials, such as registrars. The “Co-operation programme to strengthen the Rule of Law” includes special assistance with reform of the registrar system and the training of registrars (e.g. in Albania, Moldova, Ukraine, Turkey).

Albania is particularly assisted in this field through a 2-year CARDS EC/CoE Joint Programme on support to the training of court administrators which includes, *inter alia*, the training of court registrars, setting up of a legal framework for the court administrators, upgrading their knowledge in order to face the day to day tasks in the court and to give a better image to the judicial system (15/11/2005 – 15/11/2005). Similar projects are going to be designed in Turkey and Ukraine where the status of court administrators is not endorsed in a specific legislation and they do not receive proper training prior to starting their duties.

Enhancing the role of Notaries

The Council of Europe is working with ministries of justice and representatives of the notary's profession on defining the organisation of that profession, which helps to guarantee security of legal transactions – itself essential to the harmonious functioning of a democratic society. It also attempts to highlight this aspect of the notary's role in its co-operation activities to strengthen the Rule of Law (e.g. in Albania, Azerbaijan, Bulgaria, Moldova).

See: www.coe.int/legalprof

5. Internet

Advances in the field of information technology can be used to make judicial systems more effective. Recommendation Rec (2001) 2 concerning the design and redesign of court systems and legal information systems in a cost effective manner notes that up-to-date and cost-effective organisation of state-of-the-art information technology systems can improve the quality, speed and effectiveness of justice. **Recommendation Rec (2001) 3 on the delivery of court and other legal services to the citizen through the use of new technologies** lays down a series of principles and guidelines to facilitate delivery of court services to the citizen through the use of new information technologies. This recommendation states that legal information, public registers and court services, including information on the state of court proceedings, should be available in electronic form, and proposes a strategy for promoting the application of these principles in member States.