

CMD009281



COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

Committee of Ministers
Comité des Ministres

Strasbourg, 29 July 1996

Restricted
CM(96)112

For consideration at the 572nd meeting
of the Ministers' Deputies
(5-6 September 1996, B level, item 10.4)

20th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE
(Budapest, 11-12 June 1996)

Secretary General's Report

prepared in accordance with Resolution (71) 44
of the Committee of Ministers

Introduction

1. The 20th Conference of European Ministers of Justice was held in Budapest on 11 and 12 June 1996 at the invitation of the Hungarian Government. The agenda, list of participants and Resolutions adopted are set out in Appendices I-III to this report.
2. The Bureaux of the CDCJ and the CDPC and the Senior Officials held their preparatory meetings the day before the conference.
3. The Hungarian Minister of Justice was elected Chairman of the conference. The Ministers of Justice of Romania and Cyprus were elected Vice-Chairmen.
4. The theme of the conference was "Efficiency and fairness of civil, criminal and administrative justice". The main rapporteur was the Hungarian Minister of Justice, while the Ministers of Justice of Malta and the Czech Republic acted as co-rapporteurs.
5. In his opening speech, Mr Árpád Goncz, President of the Hungarian Republic, outlined Hungary's progress over the past six years in strengthening the rule of law and the market economy. Legislative reforms have been implemented, and the judicial system must fulfil its role efficiently and fairly.

In the context of the profound social and legislative changes which many of the Council of Europe's new member states were undergoing, people expected more from the judicial system, which was itself facing problems of structures and resources.

6. In his address, the Deputy Secretary General stressed that independence and impartiality of judges were essential components of a democratic state governed by the rule of law, and must be guaranteed at national level; recourse should be had to the bodies responsible for enforcing the European Convention of Human Rights only in exceptional cases.

The Council of Europe was available to help member states to repair any deficiencies, particularly in the administration of justice, and to honour the commitments they had given on joining the Council, when they asserted their willingness and ability to comply with the principles of pluralist democracy, the primacy of law and human rights.

7. After the discussions, in which virtually all the delegations spoke, the Ministers adopted Resolution No 1 (see Appendix III).

This Resolution recommends in particular that the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) be instructed to prepare a survey of national measures taken or planned, and make proposals, which could be adapted to different legal systems, on ways of increasing the efficiency of justice while respecting the need for fairness. The two Committees should also report to a future Conference of European Ministers of Justice on measures taken by states.

8. The Ministers also recommended that the Committee of Ministers take the necessary steps to enhance co-operation with the countries of Central and Eastern Europe, with a view to promoting consolidation and effective implementation of the standards and principles it had established concerning the fairness and efficiency of civil, criminal and administrative justice.

9. The Ministers welcomed the Czech Minister's invitation for the holding of an informal meeting in Prague on 11 June 1997.

Reports

10. The Hungarian Minister for Justice presented his report (MJU-20 (96) 1) in which he noted that, despite the quantity and quality of the work already completed by the Council of Europe on efficiency and fairness of justice, much still remained to be done.

Firstly, existing instruments needed to be brought into line with the constantly evolving case-law of the European Commission and Court of Human Rights. Secondly, the countries of Central and Eastern Europe, which had recently acceded to democracy and were reforming laws and practice concerning the administration of justice, must be given the help they required.

11. This was a matter, not just of legislative technique, but of politics too, since serious malfunctions of justice undermined public confidence in the structures of the democratic state.

12. In most member states, justice faced double pressures. On the one hand, action was taken to keep legal procedures within reasonable time-limits; on the other, it was necessary to ensure that this action did not operate to the detriment of fairness.

Steadily increasing material and personnel resources were needed to make this possible.

13. While highly topical in the states of Central and Eastern Europe, these problems were also very relevant in the other Council of Europe member states, and should be addressed in this wider context.

One possibility which every state should consider, for example, was the setting-up of a national judicial or similar body to which litigants could apply if their cases were being dealt with too slowly.

14. The Attorney General of Malta presented the report of the Minister of Justice (MJU-20 (96) 2), which focused on the best way of using limited resources for the administration of justice.

15. Malta, for example, had more flexible procedures for minor civil cases, and had decriminalised a large number of lesser criminal offences. This meant that the procedures which provided greater guarantees of fairness, but were also the most costly, could be reserved for the more serious civil and criminal cases.

16. To relieve the burden on the courts and enable them to deal with the cases referred to them quickly, other procedures, such as conciliation and arbitration, should be set up and used where possible.

17. Whatever the solution, it must be adopted in consultation with the legal professions, without whose co-operation any reform was doomed to failure.

18. The Czech Minister of State presented the report of the Minister of Justice (MJU-20 (96) 3), which supported the points made by the Hungarian Minister, and also called for greater co-operation within the Council of Europe.

19. The report also spoke of the delicate position in which all justice ministers found themselves; members of their governments, they had the job of ensuring that the courts functioned properly, but must not interfere with their prerogatives.

20. While anyone who felt that his case had been unreasonably delayed should clearly have an effective remedy before a national authority, it was debatable whether it was really necessary and appropriate to set up a new body for this purpose; it would seem more logical for the courts to play this role.

21. Also included in the Ministers' file was a document (MJU-20 (96) 5) prepared by the Secretariat, detailing the work done by the Council of Europe on efficiency and fairness of justice.

Summary of the discussions

22. The Ministers agreed that fairness and efficiency of justice were inherent in the concept of a state governed by the rule of law, and that this was true for all European states. One Minister nevertheless stressed that this principle was particularly important for states which had recently emerged from the former Soviet Union.

It was also vital that the judicial system should project a credible image and inspire confidence in citizens and economic players.

23. Several Ministers stressed that, while measures to improve the efficiency of justice were needed in a general sense, they must not be allowed to undermine the guarantees of

fairness already provided by national law or required by the European Convention on Human Rights and the case-law of its supervisory bodies.

24. Measures of several types, adopted or under study at national level, were instanced as fulfilling these conditions.

The first type tried to reduce the courts' case-load by restricting their jurisdiction (decriminalisation, conciliation, arbitration, etc.).

25. Others, aimed at simplifying procedures, were also referred to: shortened procedures for the payment of undisputed sums, the settling of cases by orders, rather than sentences, plea bargaining, temporary benches composed of unremunerated or retired judges, etc.

26. Finally, the Ministers focused on measures making it possible to use available resources to maximum effect: the replacement of benches by single judges in certain cases, reliance on district judges for civil cases involving small amounts or criminal cases not leading to imprisonment, the computerisation of legal services, further training for judges and legal officials, etc.

27. Some Ministers made the point that greater efficiency was also needed at the preliminary stage, before the actual court case began (e.g. simplification of procedures regarding requests for legal aid), and when sentences were being enforced, since enforcement itself generated a considerable amount of litigation.

28. Several Ministers stressed that legal officials must be involved in the planning and implementation of reforms, and even made responsible for the proper functioning of justice in their own areas of competence (e.g. costs or penalties for parties who artificially slowed down proceedings).

29. One Minister recommended setting up a European institute to train people who would then go on to train others in matters relating to the fairness and efficiency of justice. This measure should be accompanied by media action to make the public aware of the issues.

30. The Ministers considered that the CDCJ and the CDPC should continue their efforts to improve the fairness and efficiency of justice. The action which the two committees are called on to take is detailed in paragraph 14 of Resolution No 1.

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31. The Deputy Secretary General wishes to pay tribute to the Hungarian authorities and thank them both for the excellent organisation of the conference and the warm welcome extended to participants.

APPENDIX I

A G E N D A

1. Opening of the Meeting by Mr Peter Leuprecht, Deputy Secretary General of the Council of Europe
2. Statement by Mr Árpád Göncz, President of the Republic of Hungary
3. Statement by Mr Peter Leuprecht, Deputy Secretary General of the Council of Europe
4. Election of the Chair and two Vice-Chairs
5. Adoption of the Agenda
6. Efficiency and fairness of civil, criminal and administrative justice
7. Other questions
8. Adoption of Resolutions
9. Close of the Conference

APPENDIX II

LIST OF PARTICIPANTS/LISTE DES PARTICIPANTS

ALBANIA/ALBANIE :

Mr Hektor FRASHERI, Minister of Justice
Mr Arben BRACE, Director for International Relations

ANDORRA/ANDORRE :

(Apologised/Excusé)

AUSTRIA/AUTRICHE :

Mr Nikolaus MICHALEK, Federal Minister of Justice
Mr R. MIKLAU, Director of Criminal Legislation, Ministry of Justice, member of the CDPC Bureau
Mr Leo FEITZINGER, Director, Head of the Department for Civil Procedure
Mr Christian PILNACEK, Judge, Member of the Branch for Penal Legislation

BELGIUM/BELGIQUE :

M. Claude DEBRULLE, Directeur Général, Administration des Affaires pénales et criminelles, Ministère de la Justice
M. Cedric VISART de BOCARME, Chef de Cabinet adjoint, Ministre de la Justice
M. Michel CARLIER, Ambassadeur de Belgique à Budapest

BULGARIA/BULGARIE :

M. Mladen CERVENYAKOV, Ministre de la Justice
M. Ognian BAKALOV, Directeur de la coopération juridique internationale

CYPRUS/CHYPRE :

Mr Alecos EVANGELOU, Minister of Justice and Public Order
Mrs Anny SHAKALLI, Administrative Officer, Ministry of Justice and Public Order

CZECH REPUBLIC/REPUBLIQUE TCHEQUE :

Mr Cyril SVOBODA, Deputy Minister of Justice
Mr Milan KAMLACH, Director of the Legislative Department
Ms Renata DRAHAZOLAVA, Interpreter

DENMARK/DANEMARK :

(Apologised/Excusé)

ESTONIA/ESTONIE :

Mr Paul VARUL, Minister of Justice
Mr Juhan PARTS, Vice-Chancellor, Ministry of Justice

FINLAND/FINLANDE :

Mr Kari HÄKÄMLES, Minister of Justice
Mr Pekka NURMI, Director General, Ministry of Justice
Mr Jan TÖRNQVIST, Director of Legislation
Ms Kirsti RISSANEN, Secretary General

FRANCE :

M. Jacques TOUBON, Ministre de la Justice, Garde des Sceaux
M. Patrick HUBERT, Directeur adjoint, Cabinet du Ministre
M. Oliver de BAYNAST, Chef du Service des Affaires européennes et internationales, Ministère de la Justice
M. Antoine BUCHET, Chef du bureau des droits de l'Homme
Mme Inès de SOUZA, Ministère des Affaires Etrangères

GERMANY/ALLEMAGNE :

Mr Rainer FUNKE, Parliamentary State Secretary, Federal Ministry of Justice
Mr Wolfgang BIRKE, Ministerialrat
Mr Hans-Georg BOLLWEG, Assistant Head of Division, Personal Secretary of the Parliamentary State Secretary
Ms Rita CRYNEN, Richterin am Landgericht

GREECE/GRECE :

M. Evangelos VENIZELOS, Ministre de la Justice
Mme Sofia CHINIADOU, Conseiller du Ministre
Mme Elli XENOU, Chef de section des Relations internationales du Ministère de la Justice

HUNGARY/HONGRIE :

Mr Pál VASTAGH, Minister of Justice
Mr Károly BÁRD, Deputy Secretary of State, member of the CDPC Bureau
Mr Tamás BÁN, Director, Human Rights Unit, Ministry of Justice
Mr Lipót HÖLTZL, Deputy Director, Human Rights Unit, Ministry of Justice
Ms Anikó TÓTH, Expert on Human Rights

ICELAND/ISLANDE :

Mr Thorsteinn PALSSON, Minister of Justice
Mr Thorsteinn GEIRSSON, Secretary General

IRELAND/IRLANDE :

Mr Austin CURRIE, Secretary of State
Mr Richard RYAN, Principal Officer
Mr Martin O'MAHONEY, Private Secretary to the Minister of State

ITALY/ITALIE :

M. Giovanni Maria FLICK, Ministre de la Justice
Mr Antonio MIRONE, Deputy Minister of Justice
Mr Vittorio MELE, Director of Criminal Affairs
Ms Stefania MERLO, Assistant to the Minister
Ms Ersilia CALVANESE, International Relations Department
M. Giuseppe MAGNO, Magistrat attaché au Ministère la Justice, membre du Bureau du CDCJ

LATVIA/LETTONIE :

(Apologised/Excusé)

LIECHTENSTEIN :

M. Mario FRICK, Premier Ministre, Ministre de la Justice et des Finances
M. Benedikt MARXER, Président du Tribunal de Première instance
M. Norbert HEMMERLE, Secrétaire de ressort

LITHUANIA/LITHUANIE :

Mr Albertas VALYS, Minister of Justice
Mr Darius ŽILYS, Deputy Director, Department of International Law and Human Rights

LUXEMBOURG :

M. Marc FISCHBACH, Ministre de la Justice et du budget
M. Marc MATHEKOWITSCH, Premier Conseiller de Gouvernement

MALTA/MALTE :

Mr Anthony BORG BARTHET, Attorney General
Mr Vincent Anthony DE GAETANO, Judge, Superior Courts, member of the CDCJ Bureau
Mr Joseph FILLETTI, Judge, Superior Courts, member of the CDPC Bureau

MOLDOVA :

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Ms Wilhelmina SORGDRAGER, Minister of Justice
Mr Joris DEMMINK, Director General, Ministry of Justice
M. Erik LUKACS, Conseiller juridique du Ministère de la Justice
Mr Theo G.M. SIMONS, Head of the Procedural Law Section, Ministry of Justice
Mrs Marjorie BONN, Senior Legal Adviser, Ministry of Justice, member of the CDPC Bureau

NORWAY/NORVEGE :

Ms Grete FAREMO, Minister of Justice
Mr Jens Ove KRISTIANSEN, Political Adviser to the Minister
Mr Inge LORANGE BACKER, Director General, Legislation Department, Ministry of Justice

POLAND/POLOGNE :

Mr Leszek KUBICKI, Minister of Justice
Mr Telesfor NOWAK, Judge, Director of the Cabinet of the Minister
Mr Igor DZIALUK, Head European Law Division, Ministry of Justice, Member of the CDCJ Bureau

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M. José FERNANDES, Secrétaire d'Etat adjoint du Ministre de la Justice
M. Joaquim SEABRA LOPES, Directeur Général, Ministère de la Justice

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M. Gavril Iosif CHIUZBAIAN, Ministre de la Justice
M. Dinu IANCULESCU, Directeur des relations juridiques internationales et de l'intégration européenne du Ministère de la Justice
M. Teodor RUS, Directeur Général, Ministère de la Justice
Ms Cristina LUZESCU, Conseiller en chef à la Direction des relations internationales et de l'intégration européenne
M. Julian LUPU, Secrétaire personnel du Ministre

RUSSIA/RUSSIE :

M. Valentin KOVALEV, Ministre de la Justice
Mr Yuri BULANOV, Head of the International Legal Department
Mr Nikolai RAFKIN, Specialist, International Legal Department

SAN MARINO/SAINT-MARIN :

(Apologised/Excusé)

SLOVAK REPUBLIC/REPUBLIQUE SLOVAQUE :

M. Jozef LIŠČÁK, Minister of Justice

Mme Mária USAČEVOVÁ, Directrice de la Section de l'Administration des Tribunaux

Mr Jozef BOTKA, Président du Tribunal de District à Banksá Bystrica

M. Július KRÁLIK, Interprète

Mr Miloš HAŤAPKA, Head of International Treaties Division, Ministry of Justice, member of the CDCJ Bureau

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Mrs Meta ZUPANČIČ, Minister of Justice

Mr Penko BOSTJAN, Counsellor

Ms Lifija SEGA, Interpreter

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M. Francisco BUENO ARÚS, Secrétaire Général technique

Mme Maria José AMORAS, Directeur Général du Cabinet du Ministre

M. Valentin DUEÑAS JIMENEZ, Sous-Directeur Général adjoint

M. Pedro SANZ, Secrétaire d'Ambassade de l'Espagne à Budapest

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M. Arnold KOLLER, Conseiller fédéral, Chef du Département fédéral de Justice et Police

M. Peter WIDMER, Conseiller d'Etat du Canton de Berne, Président de la Conférence des chefs des Départements cantonaux de justice et police

M. Heinrich KOLLER, Directeur de l'Office fédéral de la Justice

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Mr Ugur IBRAHIMHAKKIOGLU, Under Secretary of State, Ministry of Justice
Mr Orhan YET, High Counselor, Ministry of Justice
Mr Meltem BUYUKKARAKAS, Third Secretary, Embassy of Turkey in Budapest

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Mr Seriiy HOLOVATY, Minister of Justice
Mr Daniel BILAK, Counsel to the Minister
Mr Constantin MAZUR, Counsellor

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Mr Paul CULLEN, Q.C., Solicitor General for Scotland
Sir Thomas LEGG, KCB, QC, Permanent Secretary of the Lord Chancellor's Department and Clerk to the Crown in Chancery
Mr Edwin KILBY, Legal Adviser, Lord Chancellor's Department
Mr Peter BEATON, Legal Adviser, Scottish Courts Administration
Mr Ian CHISHOLM, Head of Procedures and Victims Unit, Home Office
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Mlle Carla MEIBERGEN
Mme Serra YILMAZ
M. Michel DAVIDENKOFF
Mlle Barbara GRUT
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APPENDIX III

RESOLUTION N° 1

**ON MEASURES TO ENSURE
THE FAIRNESS AND EFFICIENCY OF JUSTICE
AND, IN PARTICULAR, TO REDUCE UNDUE DELAYS.**

1. The Ministers participating in the 20th Conference of European Ministers of Justice (Budapest, 1996);
2. Having examined the report submitted by the Hungarian Minister of Justice on efficiency and fairness of civil, criminal and administrative justice;
3. Having also examined the co-reports of the Ministers of Justice of the Czech Republic and Malta;
4. Bearing in mind the instruments drawn up within the Council of Europe, in particular the European Convention on Human Rights and other international instruments, to promote the fairness and efficiency of justice;
5. Having regard to the fact that until now the work of the Council of Europe has, in this field, concerned essentially the fairness of justice;
6. Noting that delays in proceedings are currently a serious problem in many countries and may make these proceedings unfair;
7. Recognising that the right to a fair hearing within a reasonable time, guaranteed by Article 6 of the European Convention on Human Rights, holds a prominent place in democratic societies;
8. Concerned by the increase in the number of cases concerning this Article concerning "a reasonable time" and by the violations found by the Convention organs;
9. Convinced of the need to take appropriate measures to ensure that cases are processed within a reasonable time as "justice delayed is justice denied";

10. Recognising the desirability of identifying cost effective measures to speed up justice, without however endangering the other guarantees of a fair trial;
11. Considering that governments should adopt strategies to identify and to resolve problems relating to undue delay, in association with the participants in the proceedings;
12. Mindful of the importance of improving international co-operation in order to assist States to promote the fairness and efficiency of justice;
13. AGREE on the importance of adopting measures to promote fairness and efficiency of justice, in compliance with the provisions of the European Convention on Human Rights and the other international instruments prepared within the Council of Europe;
14. RECOMMEND that the Committee of Ministers instruct the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) to continue their efforts to improve the fairness and efficiency of justice and, in particular, to make proposals to increase the efficiency of justice. To that end the Committee of Ministers is invited to request the CDCJ and the CDPC:
 - a. to draw up, on the basis of information provided by member States, a survey of recent or proposed legislative and other measures in these States to increase the efficiency of justice,
 - b. to identify the principal reasons for undue delays in civil, criminal and administrative proceedings and to consider the costs for the parties and for the State, having regard, in particular, to the case law of the European Commission and Court of Human Rights,
 - c. to propose cost effective measures which could be adapted to the different legal systems in order to increase the efficiency of justice while respecting the need to ensure its fairness and facilitating access to justice,
 - d. to study whether the introduction of measures aimed at controlling the length of proceedings before courts and other bodies might be conducive to reducing the length of such proceedings and, if so, what form these measures should take. In considering these questions, regard should be had to the paramount duty of doing justice in proceedings, and to the need to ensure the independence of the judiciary and the respect of fundamental rights and freedoms;
 - e. to review the existing legal instruments prepared within the Council of Europe and to make, if appropriate, any relevant proposals with a view to improving the efficiency and fairness of justice,

15. RECOMMEND that the Committee of Ministers invite the CDCJ and the CDPC to report back to a later Conference of European Ministers of Justice on cost effective measures taken by member States with a view to increasing the efficiency of justice,

16. RECOMMEND that the Committee of Ministers take the necessary steps further to enhance co-operation with countries of Central and Eastern Europe to promote the consolidation and effective implementation of the standards and principles which it has established concerning the fairness and efficiency of justice in civil, criminal and administrative matters.

RESOLUTION N° 2

The Ministers participating in the 20th Conference of European Ministers of Justice (Budapest, 1996),

Aware of the advantage of arranging personal contacts between the Ministers responsible for their governments' policy in the legal field;

Having learnt with pleasure of the invitation of the Minister of Justice of the Czech Republic to hold an Informal Meeting in Prague in 1997, on the subject of "Links between corruption and organised crime";

EXPRESS the warmest thanks to the Hungarian Government for the excellent organisation of the 20th Conference in Budapest and for its kind hospitality;

GRATEFULLY ACCEPT the invitation to hold their next Informal Meeting in Prague in 1997.