

Enhancing the effectiveness of ECHR system at national level

I. In brief

The European Convention on Human Rights (ECHR) serves as a benchmark for CoE member states and non-state actors, as well as beyond the member state boundaries, in the field of human rights.

Enhancement of the effectiveness of the European Convention on Human Rights (ECHR) system at a national level is essential in order to ensure the full and effective protection of human rights and the prevention of their violation throughout the 47 Council of Europe (CoE) member states.

The CoE, through its standard-setting and monitoring work, is in a unique position to provide support to its member states to ensure the effectiveness of human rights at a national level. This is being done through co-operation projects which the CoE has been successfully implementing since the end of the nineties.

Significant results have been achieved through projects implemented by the CoE that have resulted in in-depth reforms necessary to secure the protection of human rights at a national level.

II. Background

Human rights protection and promotion is a core mission of the CoE. Its primary aim is to create a common democratic and legal area throughout the whole continent, ensuring respect for the fundamental values of human rights, democracy and the rule of law.

The CoE legitimacy comes from the member states' commitments to protect the rights enshrined in the ECHR at national level, to

properly execute the judgments of the European Court of Human Rights (ECtHR) and to avoid new violations, especially repetitive ones. Since the Convention system is based on the idea of subsidiarity, it is the primary responsibility of member states to ensure the effective implementation of the ECHR at national level. They reaffirmed their determination to do so in the recent Brighton Declaration (20 April 2012), paragraph 9.c.iv)-.vi) in which they propose the following measures: *“enabling and encouraging national courts and tribunals to take into account the relevant principles of the Convention, having regard to the case law of the Court”*, and *“providing appropriate information and training about the Convention in the study, training and professional development of judges, lawyers and prosecutors”*.

The CoE plays a crucial role in assisting in this process. Through co-operation projects, the CoE disseminates good practices and contributes to raising the standards of human rights observance in Europe.

The CoE draws upon an extensive network of both national and international experts to carry out its co-operation work. This combination ensures that CoE standards are understood and applied, bearing in mind the national context, including the legislative framework.

III. Comparative advantages and added value

Having set the standards for human rights, democracy and rule of law in Europe, the CoE has a natural role to play in enhancing the application of its standards at the national level. The added value of its action lies in its comprehensive approach, based on strong co-operation with partner countries and donors. The CoE provides a combination of legislative expertise and capacity building support, paying attention to impact and aiming at sustainability, all essential and complementary elements to ensure effective implementation of the ECHR at

national level. The support offered by the CoE is designed to meet the needs of the partners and remedy any human rights protection shortcomings as identified by CoE judicial and monitoring bodies such as the ECtHR and the CPT, as well as by the Committee of Ministers in the framework of its function of supervising the execution of judgments of the ECtHR.

A comprehensive approach, based on co-operation

The CoE's support to enhance the effectiveness of the ECHR at national level is based on a comprehensive approach. Projects developed include needs assessment, legislative expertise, capacity-building, awareness-raising, peer-to-peer exchanges and evaluation, paying attention to impact and aiming at sustainability.

These projects are designed and implemented in close co-operation with the partner country to ensure relevance and ownership. They are tailor-made with particular reference to the specific needs of the partner state and target groups concerned.

Such projects are either funded by the Organisation's ordinary budget or by external resources, mainly through EU/CoE Joint Programmes, the Human Rights Trust Funds or voluntary contributions. This is an effective way of pursuing shared objectives. The Brighton Declaration reiterated the importance of co-operation between the CoE and the European Union to ensure effective implementation of joint programmes. Close contact is maintained with the donors, from conception to project evaluation, in order to assess results and discuss possible follow-up. Synergies between projects are also sought, to avoid duplication, build on lessons learnt and results already achieved.

Legislative expertise

Legislative expertise helps ensure that national regulatory frameworks are brought into line with

the CoE human rights standards, or do not stray from them.

Such expert opinions, carried out at the request of the national authorities, make it possible to address possible issues in national legislation which otherwise might give rise to problems that could lead to the ECtHR finding violations of the Convention. In this way, the CoE ultimately, prevents new applications being brought before the ECtHR.

Examples of draft legislation reviewed includes Codes of Criminal Procedure, Criminal Codes, laws on alternative service, laws on property, laws on freedom of religion, laws on freedom of assembly, laws setting up Ombudsperson institutions, laws on privacy etc.

More specifically, the CoE contributed to the adoption of new Criminal Procedure Codes in several countries which created the basis for a modern adversarial criminal procedure with the necessary safeguards and guarantees. This helped eliminate many typical problems which served as a major source of repetitive applications to the ECtHR, such as lengthy or unjustified pre-trial detention, non-independence of investigations, unfair trial, restrictions on the right to legal aid, etc.

Capacity building and awareness-raising

The work on capacity building and awareness-raising focuses primarily on the ECHR. The training is aimed at those groups with a direct role in applying or invoking the Convention in the national judicial systems in member states: that is, judges, prosecutors and lawyers. Some of the programmes take the form of traditional in-service training through seminars, round tables and workshops. This offers either an introduction to the Convention system as a whole and its application within national judicial systems; or it may concentrate on examining certain themes in-depth, for example the right to a fair trial, the requirements regarding lawful detention and review of detention, the right to

peaceful enjoyment of property, etc. All training is interactive and based on adult learning techniques. It combines straight-forward lecturing with tailor-made case studies, and then the actual case used as an example is discussed in depth. The cases analysed are chosen in light of the interests of the trainees and the particular issues being raised in the applications from that country before the ECtHR.

The trainees are provided with publications and case extracts or full texts of judgments, in the relevant language. They are also given access to on-line materials such as HUDOC and the HELP training tools (see below). All these materials are available to any individual who wishes to improve his or her knowledge of the Convention, not just those taking part in organised training.

In addition, wider capacity-building is provided to national training institutions and they are encouraged to systematically use the training tools and other materials available free of charge on the HELP website.

The training on the ECHR should be seen both as an immediate contribution to improving the level of skills and knowledge among legal professionals, and as a longer-term investment towards reducing the number of cases brought before the ECtHR. The more familiar judges, prosecutors and lawyers are with the Convention, the more likely they are to apply or invoke it correctly in national courts. As a result, human rights issues can be solved directly at the national level rather than having to be raised in an application to the Court in Strasbourg.

Such training on the Convention is designed to meet the needs of the beneficiaries, as assessed by CoE judicial and monitoring bodies such as the ECtHR and the CPT. These bodies confirm that there continue to be shortcomings with regard to the capacity of legal professionals applying European human rights standards.

In most cases, capacity building activities are organised at the request of the national authorities and partner institutions themselves. Typical partners for training are supreme and lower instance courts, high councils of justice, prosecutors general offices, training schools, bar associations and human rights NGOs.

Another target group has been the Offices of the Government Agents before the ECtHR, to which support has been provided to strengthen their institutional role vis-à-vis other actors in regard to the execution of judgments of the ECtHR.

Also, the Council of Europe works with the National Human Rights structures (Ombudsmen, National Human Rights Commissions) to strengthen their role and capacities in protecting human rights at national level.

The HELP Programme

The European Programme for Human Rights Education for Legal Professionals (the HELP Programme), funded by the Human Rights Trust Fund, supports the CoE member states in implementing the ECHR at national level, in accordance with the Committee of Ministers' Recommendation (2004) 4, the 2010 Interlaken Declaration and the 2012 Brighton Declaration.

This is done by enhancing the capacity of judges, lawyers and prosecutors to apply the ECHR in their daily work in all 47 member states.

Under its umbrella, the CoE has developed a wide range of substantive and methodological resources for training on the ECHR, including a series of curricula on the substantive Convention rights and cross-cutting themes, case studies, lecture notes, presentation slides and e-learning cases. They are available in different languages on the HELP website (www.coe.int/help). The particular added value of the HELP website and its training resources is that it can be used by any

judge, prosecutor or lawyer wishing to learn about the ECHR, as well as by training institutions. The HELP tools are incorporated into all the training activities organised by the CoE, including in the framework of EU/CoE joint programmes.

National ownership and sustainability

The impact of the work carried out by the CoE depends on the full political commitment of partner countries to encourage the trainees to actually apply their knowledge and skills. It also depends on the effective functioning of national institutions and subjective factors, for example, individual perceptions by the trainees. Changes - sometimes radical - of legal practice require changes in mentality which can only be achieved over a period of several years of sustained support.

The question of national sustainability depends equally on the political will to continue implementing the changes proposed, and the stability and commitment within the partner institutions. In addition, the availability of financial means by the CoE to consolidate the achieved results is crucial.

Whenever possible, training-of-trainers programmes are organised. The aim is to create a sustainable resource for providing training on the ECHR at national level, without being dependent upon CoE expertise. Such larger-scale programmes are mainly undertaken under externally funded multi-annual projects. Training-of-trainers is a good way of developing national ownership and fostering a culture of ECHR training within the legal professions.

IV. Geographic contextualisation

The CoE provides support to all its member states upon their request. In recent years, it has implemented large-scale projects in different geographical areas, ranging from the South

Caucasus, the Russian Federation and Ukraine to South-Eastern Europe and Turkey.

The strengthening of the CoE presence in partner countries through its field offices also contributes to making sure that the specific needs of the local actors are taken into account and addressed in the projects. The CoE offices have developed close links with partner institutions; they provide regular updates about the situation in the country and useful inputs at the stages of project drafting, implementation and follow-up.

V. Thematic example

The Joint Programme between the European Union and Council of Europe (EU/CoE) “**Combating ill-treatment and impunity**”, which was the first such undertaking by the CoE in this field, was initiated in January 2009 in response to findings of the CPT. It was implemented in five countries (Armenia, Azerbaijan, Georgia, Moldova, Ukraine). The CPT underlined in its periodic reports that persons deprived of their liberty by the police in partner countries ran a significant risk of ill-treatment. In addition, the ECtHR also addressed this issue in a number of judgments regarding violations of Article 3 of ECHR. The complaints of ill-treatment in partner countries were investigated in the same way as allegations of any other crimes. There were no special procedures or mechanisms established for this purpose. Furthermore, in the case of such investigations, there was a risk that the common safeguards, applied in other criminal cases, were no longer able to protect the individuals due to the “corporate” interests of law enforcement agencies and their inherent disinclination to bring such cases to light. Investigations of allegations of ill-treatment by the police were rarely initiated and usually did not result in corresponding judicial verdicts or administrative/disciplinary sanctions. Even if such sanctions took place, they were disproportionately moderate.

Notwithstanding the sensitive nature of the subject matter, in-depth fact-finding missions organised under the Project were facilitated by the authorities and a comprehensive analysis was made of the regulatory, structural and procedural frameworks, with corresponding recommendations. Capacity-building and awareness-raising campaigns were also conducted. In 2009, Country Reports were produced on the basis of these missions, which analysed the regulatory frameworks, as well as structures, procedures and mechanisms aimed at combating ill-treatment and impunity in line with European standards. The reports included recommendations for improving the legislation, sub-legislative acts, institutional and procedural framework for the effective investigation of ill-treatment complaints. Key groups of legal professionals, including judges, prosecutors, lawyers, law enforcement officers and human rights NGOs, developed their knowledge and skills on how to apply the ECHR and its case law, as well as the CPT standards in their work.

The follow-up EU/CoE Joint Programme entitled **“Reinforcing the fight against ill-treatment and impunity”** was launched in June 2011 and covers the same partner countries. Its objective is to continue supporting the legal and institutional reforms and reinforce national capacities for combating ill-treatment by law enforcement agencies and penitentiary institutions, including strengthening the effectiveness of investigations of allegations of ill-treatment. The project includes a new element of combating ill-treatment in pre-trial detention facilities and penitentiary institutions. The first project had resulted in an increase of national court verdicts based on the ECHR and on the improvement of internal regulatory mechanisms. The legislative and structural changes and, in particular, the establishment of an independent and efficient investigation mechanism, had proved to be a more challenging task demanding longer-term intervention by the CoE. Documented cases or serious allegations of ill-treatment in the partner countries continues to be of concern for

the CoE and other international human rights protection organisations; however, statistical analysis demonstrates a reduction of such incidents, as well as an increase in the number of criminal investigations and sanctions applied to public officials and state agents responsible for ill-treatment. The eradication of ill-treatment by law enforcement officers requires continued sustainable efforts and firm enforcement of the policy of zero tolerance.

The main developments with an impact on preventing and combating ill-treatment in the partner countries, to which the Project had a direct contribution, were related to:

- *The policy of zero tolerance towards ill-treatment was officially declared as a priority of national governments, highlighted in the addresses of high level public officials and systematically introduced in the strategic documents of the partner countries.*
- *Material and procedural legislation of the partner countries has been amended and supplemented with important provisions drawn up in response to the 2009 Country Reports and CoE expert recommendations on improving the regulatory framework for combating ill-treatment.*
- *Special investigations services or institutions in charge of investigations of police complaints have been or will be established.*
- *National high courts referred to the ECHR in their judgments, with direct impact on judicial practice in lower courts.*

One of the major recommendations of the Country Reports concerned the need for an independent police complaints body. An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service. The independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-

treatment. Although not following an identical model and with a variable degree of success, the authorities of all five partner countries committed to addressing the recommendation to establish an independent police complaints mechanism.

VI. Contacts

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