

Independence and efficiency of Justice System

1. Reform of Justice System

I. In brief

The Council of Europe is a widely recognized reference point in the field of justice in Europe: in over 60 years of existence, the Organisation has developed common standards for its 47 member states and it has well-established expertise and experience in the field of independence, efficiency and quality of justice.

European standards on an independent and efficient judiciary are mostly those set forth by the Organisation and they are acknowledged by the European Union as such. The Council of Europe also monitors the function of European judicial systems through its European Commission for the Efficiency of Justice (CEPEJ) and provides support to its member states in improving their judicial systems in line with the standards set forth by the Organisation.

II. Background

The work in the field of justice is part of the Organisation's mission to promote the rule of law, human rights and democracy in its member states, in accordance with its Statute. The Council of Europe provides its member states with guidance and expertise with regard to the substantive and practical implications of the principle of an independent and efficient judiciary. The main objective is to help member states improve their legislation and practice in line with these standards and make their policies and systems in the field of justice more efficient and closer to the needs of the users.

III. Comparative advantages and added value

The Council of Europe offers a unique contribution in the field of independence, efficiency and quality of justice. It is the sole European Organisation which provides a **“full cycle” of support** to its member states by making available both reference standards, monitoring and capacity-building tools in the field of justice.

The Council of Europe *acquis* has been developed by the Council of Europe standard-setting and monitoring bodies, in particular the European Court of Human Rights. In its rich case law, the Court has interpreted and developed the **requirements of a fair trial** enshrined in Article 6 of the European Convention on Human Rights (ECHR), a binding treaty for the Council of Europe's 47 member states. Other bodies which issue important substantive guidance are the Consultative Council of European Judges, the Consultative Council of European Prosecutors, the European Commission for Democracy through Law (the Venice Commission) and the Commissioner for Human Rights. These bodies focus on issues such as the organisation of judicial systems, the independence of the judiciary, ethics and liability of judges, the funding and management of courts, training of judges, the function of the prosecution and its relations with the judiciary in a democratic society, and the role of the prosecution outside the criminal law field, to mention just a few.

The Council of Europe is also the **evaluator of the day-to-day functioning of European court systems** through the CEPEJ. The CEPEJ comprises qualified experts from the 47 Council of Europe member states and was set up to assess and improve the efficiency of judicial systems by means of practical tools and measures. To this end, every two years the CEPEJ publishes a report based on a proven scientific process widely validated by the scientific and judicial community in Europe and

beyond. During the process of preparation of the report, data related to key indicators for the function of judicial systems are collected from member states, verified and included in a database made up of more than 3 million entries. The report, which provides a detailed picture of the situation of European judicial systems, is an important comparative tool. Its tables, graphs and comments help understand the day-to-day function of courts, underline the main trends in judicial systems and identify key issues to be addressed. The report is also an important tool for policy makers, legal professionals and researchers, and can guide them in their judicial reform endeavours.

In addition, the CEPEJ has developed specific tools aimed at addressing, in particular, the problem of **excessive length of judicial proceedings**, in the form of the SATURN Guidelines and the Checklist for judicial time management. Another set of tools focus on developing user-oriented policies in the field of justice, such as the Checklist for promoting the **quality of justice** in Courts. All these tools have been applied in a number of courts throughout Europe with a view to speeding up judicial proceedings and increasing users' satisfaction with justice services.

The CEPEJ efforts have been specifically mentioned as a European reference point within the framework of the EC Forum for Justice (EC Communication of 4 February 2008) and in particular in the Stockholm Programme. The CEPEJ co-operates closely with the European Commission, the Council of the European Union and the European Parliament, and is often requested to make available its expertise beyond European borders.

In addition, the Council of Europe has a track record in the implementation of **capacity-building** projects, which draw on the Organisation's longstanding experience in co-operation activities and support to member states in the implementation of European standards on an independent and efficient

judiciary. The Council of Europe's advice is sought with regard to issues such as the role and responsibilities of judicial self-governing bodies and training institutions, improving court management in line with European standards and more generally ensuring a better-functioning judicial system. A network of experts, practitioners, and members of specialised monitoring bodies make available their expertise to member states on these different aspects of judicial reform.

Membership of the Council of Europe obliges member states to apply the standards set forth by the Organisation, notably the requirements relating to the judiciary, human rights and democratic processes. These standards are also part of the **European Union *acquis*** and their fulfilment is crucial in the accession path of certain countries to the European Union. Framing projects within the context of co-operation with the Council of Europe offers additional guarantees with regard to the desired alignment of member states' justice systems with European standards, as well as of sustainability.

IV. Geographic contextualisation

The Council of Europe intervenes in all its member states. A number of European Union/Council of Europe Joint Programmes (JP) and Voluntary Contributions (VC) have been implemented in Southern, Central and Eastern Europe.

Recent examples include:

- **Increased independence, transparency and efficiency of the justice system of the Republic of Moldova**

The project aimed to improve the independence, transparency and efficiency of the justice system and guarantee a fair access to justice for all citizens. It focused on the professions contributing to the administration of justice, such as judges, prosecutors, lawyers,

and auxiliary staff. As a result of the efforts under this JP, an updated database on Moldovan legislation was put in place. The National Institute of Justice, which provides training to judges and court staff, was set up and supported in its initial stages of operation. Recommendations were made to bring lawyers' activities in line with European standards and best practice. Expertise was also provided with regard to the creation of a private system of enforcement of domestic courts decisions.

- **Support to the reform of the judiciary in Serbia in the light of Council of Europe standards**

The project, funded by the World Bank, was developed to support the on-going process of reform of the judiciary outlined in the 2006 National Judicial Reform Strategy (NJRS). It consisted of a comprehensive stock-take of the reforms and their results, in order to identify the obstacles hindering judiciary reform in Serbia. A comprehensive expert report was drawn up which set out specific recommendations for how to improve the independence, transparency, accountability and efficiency of the Serbian justice system, and this was accompanied by a roadmap for implementation of the recommendations.

- **Transparency and efficiency of the judicial system of Ukraine (TEJSU)**

The JP contributed to strengthening the efficiency and independence of the judicial system in line with European standards, in particular for the continuous development of legal reforms and for institutional support and capacity building. The project worked in close co-operation with all the Ukrainian decision-makers and also targeted judges, prosecutors, lawyers/ advocates, court clerks, administrative and teaching staff of judges' and prosecutors' training structures. Thanks to the JP, all partners and beneficiaries received, at different levels, the necessary tools for the development and

the establishment of a transparent and efficient judiciary system in Ukraine.

By providing detailed advice and recommendations, the JP helped the Ukrainian authorities increase the compliance of a number of key laws with European standards, notably the Law on the Judiciary and the Status of Judges, the Law amending certain legislative Acts of Ukraine in relation to the prevention of abuse of the right to appeal, the law on Free Legal Aid, the regulation on an automatic case-management system in Ukrainian courts and, perhaps most importantly, the Criminal Procedure Code.

Capacity building with the main beneficiaries was at the heart of the Project's outputs. Key professional groups became acquainted with legal topics, such as the methodology of the interpretation of legal acts, the application of legislation against corruption and against racism and intolerance, legal aid, the monitoring network devices and applications, the ECHR and the case law of the ECtHR, the new case management system for general courts, judicial education, and the implementation of the new case management system in general courts. Alternative Dispute Resolution (ADR) put mediation as a tool on the map for Ukrainian citizens and the authorities thanks to the organisation of a Mediation Week and the setting up of four pilot courts around the country devoted to mediation as a means towards decreasing the number of cases dealt with by courts and strengthening the efficiency of courts.

The Project Team assisted all beneficiaries through institutional support to overcome differences and facilitate dialogue between them. This support promoted the signature of mutual co-operation agreements between the different institutions by which they committed themselves to working together in a certain number of common areas and also enhanced networking and exchange of information. As a milestone, the Project gathered together under the same umbrella, for the first time ever, two key stakeholders, the Academy of Judges and

the Academy of Prosecutors and enhanced the dialogue between the two.

Furthermore, the dissemination of European standards and the awareness of the work of the CoE through a range of activities were organised during the whole implementation period of the project along with a series of publications on human rights.

Technical support was provided to national stakeholders, in particular the installation of computer workstations for the regional branches of the National School of Judges, all 737 Ukrainian courts were connected to VPN hardware and software and equipped with LAN, all the general courts of Chernivtsi region were computerised and the High Council of Justice was provided with IT equipment.

- **Access to justice in Armenia**

The JP, which is on-going, supports the judicial reforms undertaken by the Armenian government through the promotion of the rule of law and human rights, the improvement of the efficiency of the judiciary and access to justice. The project focuses in particular on supporting the Chamber of Advocates, improving training and education of judges and court personnel, and facilitating access to justice and transparency of the judiciary. As a result of the assistance provided, a new Law establishing the School of Advocates was adopted, and all the regulatory and teaching tools needed for the School to function effectively were adopted. A new curriculum for initial training of judges is being drawn up. The Project supports the development of an E-notary system which will contribute to strengthening the security of transactions and legal acts.

- **Enhancing the role of the supreme judicial authorities in respect of European standards in Turkey**

The purpose of this on-going project is to enhance the roles of the Higher Courts in the judicial system by reinforcing their awareness of the *acquis*, the rights and freedoms guaranteed by the European Court of Human Rights, the provisions of the European Social Charter and other European standards. In addition, the project aims to enhance co-operation and exchange of good practice with European peer institutions.

The peer-to-peer exchange of experience with equivalent European institutions has been significantly reinforced, and sustainable contacts between the Turkish High Courts and European institutions have been established, resulting in an enhanced level of direct co-operation, including at the highest levels. Through different visits mainly to the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg, and also to the European institutions in Brussels and The Hague, the highest judicial authorities in Turkey have been able to reinforce their skills on the domestic application of European standards and their capacity to develop the regulatory frameworks. Conferences and roundtables on various topics established international platforms for the partner institutions to articulate and discuss various internal difficulties. The discussions led to a good understanding of the case law and created the basis for a better implementation of the ECHR at the national level.

In addition, the project places groups of Turkish judges are placed on a six-month basis with the Registry of the ECtHR where they undergo on-job training by experienced lawyers from the Registry of the ECtHR. At their return in Turkey, it is expected that the trained judges will have an increased knowledge of the ECtHR which they will subsequently share with their peers in Turkey.

The JP also supports the Turkish Constitutional Court in establishing a system for the review of individual constitutional complaints, a right

given to Turkish citizens after the referendum in September 2012. This is being pursued through capacity-building of representatives of the Registry of the Constitutional Court and exchanges of experience and good practice with other European Constitutional Courts.

- **Promotion of judicial reform, human and minority rights in Georgia, in accordance with Council of Europe standards**

The Project, funded by Denmark, pursues two main objectives: improving the judicial and correctional system, and strengthening the capacity of the Public Defender's Office. The Project focuses on training, essentially on training of judges in the human rights field in the light of the requirements of the ECHR. Following the implementation of a new Code of imprisonment in 2010, the staff of penitentiary institutions have also been trained in order to help ensure respect for human rights and the full implementation of Council of Europe standards.

- **Strengthening the Court Management System in Turkey.**

The project aims to improve the function and efficiency of the Turkish judiciary according to European standards as provided in the EU Accession Partnership and the National Programme for the Adoption of the *acquis*. The JP focuses on the reform of the Turkish court management system in order to make it more professional, effective and efficient.

It follows up a previous pilot project aimed at introducing a new court management system in Turkey, which targeted 5 pilot courts. The current project aims to strengthen the new court management system by facilitating the adoption of legislation and continuing the implementation of court management practices tested in the previous project. These practices concern the setting up of information and front-office desks, the appointment and training of judicial assistants, court managers and media

spokespersons, an increased application of quality and external relations policies, as well as methods of alternative dispute resolution. The successful application and fine-tuning of these new practices will allow for the dissemination of the new court management system throughout Turkey.

The Council of Europe also implements regional and multilateral programmes in the field of justice. The European Union/Council of Europe **JP on "Enhancing judicial reform in Eastern Partnership countries"** is an example.

The Project supports the on-going process of judiciary reform in Armenia, Azerbaijan, Georgia, Moldova and Ukraine. It provides a multilateral forum for identifying and discussing obstacles to the implementation of European standards regarding an independent, professional and efficient judiciary, and for exchanging best practice. Three comprehensive reports have been drawn up under the Project, analysing the legislation and practice of each beneficiary in the light of relevant European standards and then setting out recommendations. The themes of the reports are judicial self-governing and the career of judges; the lawyers' professions and the training of judges. The reports have been discussed in-depth with the national authorities during a number of bilateral meetings.

For more information:

http://www.coe.int/t/dgi/overview_dgi_jhd_en.asp
http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp

2. Constitutional Justice

I. In brief

As a key element of its mandate to provide advice on draft Constitutions and draft legislation in the field of democratic

institutions, the Venice Commission of the Council of Europe has consistently promoted the **establishment of Constitutional Courts and equivalent bodies** in its 58 member states as well as its associate, observer/special status member states.

The establishment of such bodies reflects the principle of the supremacy of the Constitution that should be ensured by Courts, which have the double task of annulling unconstitutional legislation and protecting human rights. In its **opinions**, the Commission has always provided practical advice on how to establish strong, independent Constitutional Courts.

Once such Courts are established, the Commission engages with them and **includes them in multilateral co-operation with other courts**, with the purpose of promoting 'cross-fertilisation' between the Courts and strengthening their capacity through international exchange.

Through its work with Constitutional Courts, the Venice Commission pursues its work aimed at promoting the rule of law by **focusing on the implementation of constitutional law**.

Already in 1991, the Commission set up the Centre on Constitutional Justice with the main task of collecting and disseminating constitutional case-law. The Commission's activities in this field are supervised by the **Joint Council on Constitutional Justice**. This body comprises members of the Commission and liaison officers appointed by the participating courts in some 70 countries (including some outside Europe), by the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights.

Since 1996, the Commission has established **co-operation with a number of regional or language-based groups of constitutional courts**, in particular the Conference of European Constitutional Courts; the

Association of Constitutional Courts using the French Language; the Southern African Chief Justices Forum; the Conference of Constitutional Control Organs of Countries of New Democracy; the Association of Asian Constitutional Courts; the Union of Arab Constitutional Courts and Councils; the Ibero-American Conference of Constitutional Justice and the Conference of Constitutional Jurisdictions of Africa and Commonwealth Courts.

In order to bring these groups together, the Venice Commission organised a First World Congress of the **World Conference on Constitutional Justice (WCCJ)** on the topic of human rights, in Cape Town in January 2009, hosted by the Constitutional Court of South Africa. On the basis of a declaration adopted at this First Congress, a Statute for a permanent body was prepared and then discussed at the Second Congress. This event dealt with the topic of the Independence of Constitutional Courts and was hosted by the Federal Supreme Court of Brazil, in Rio de Janeiro in January 2011.

The Statute of the WCCJ was adopted on 23 May 2011 in Bucharest, and entered into force on 24 September 2011 on the accession of 30 constitutional courts or equivalent bodies. 59 Constitutional and Supreme Courts and Constitutional Councils have joined the World Conference (status September 2012, list www.venice.coe.int/WCCJ).

Since 1993, the Commission's constitutional justice activities have also included the publication of the **Bulletin on Constitutional Case-Law**, which contains summaries in French and English of the most significant decisions over a four-month period. The *Bulletin* also has an electronic counterpart, the **CODICES database**, which contains some 7,000 decisions rendered by over 95 participating courts together with constitutions and descriptions of many courts and the laws

governing them.¹ These publications have played a vital “cross-fertilisation” role in constitutional case-law.

By facilitating access to foreign and international case-law, the *Bulletin* and CODICES enable judges to draw on arguments used by their peers in other countries, thus strengthening judicial authority.

At the request of a constitutional court or the European Court of Human Rights, the Commission also provides *amicus curiae* briefs.

One final area of activity in the constitutional justice sphere is the **direct support** provided by the Commission to constitutional and equivalent courts **when these are in difficulty or subjected to pressure by other state authorities** (e.g. through statements in favour of the independence of the constitutional courts concerned). The Commission has even, on several occasions, been able to help some courts, threatened with dissolution, to remain in existence.

Lastly, the Commission holds seminars and conferences in co-operation with constitutional and equivalent courts, and makes available to them on the Internet a confidential on-line forum, called the “Venice Forum”, through which they can speedily exchange information relating to pending cases.

II. Background

The work of the Venice Commission in the field of Constitutional Justice is transversal and covers the key areas of the Council of Europe’s basic principles: democracy, the protection of human rights and the rule of law.

¹ CODICES is available on DVD and on-line (<http://www.CODICES.coe.int>).

The decisions of the Constitutional Courts have a strong impact on all aspects of society and, therefore, the strengthening of the independence of Constitutional Courts is an essential preventative measure to avert problems in most areas of the Council of Europe’s work.

III. Comparative advantages and added value

Being trusted by the Courts because of the independence of its members and its role as a service provider to the Courts, the Venice Commission of the Council of Europe has been able to establish a unique network of exchange and support for Constitutional Courts and equivalent bodies. This network has no equivalent in other international organisations.

This is why not only European Constitutional and Supreme Courts and Constitutional Councils, but also Courts from other continents are keen to work with the Venice Commission within the framework of regional co-operation and within the World Conference on Constitutional Justice (WCCJ).

The support of the Venice Commission for Constitutional Courts is recognised by the Courts themselves but also by the member States and the European Union.

The relevant reference texts, developed by the Venice Commission, are foremost the [Study on individual access to constitutional justice](#) CDL-AD(2010)039rev and elements from the [Compilation of Venice Commission opinions and reports on constitutional justice](#) CDL(2011)048).

IV. Geographic contextualisation

Constitutional justice activities of the Venice Commission have a tendency to focus on European Courts. However, the Courts in the Commission’s other member and observer states take an active role in participating on an

equal footing in the Joint Council on Constitutional Justice and benefit from the full range of services provided by the Venice Commission.

Courts which co-operate within the framework of regional agreements and the World Conference on Constitutional Justice (WCCJ) tend to participate in a 'lighter' form and contribute by providing their case-law only to the CODICES database and by participating in the confidential Venice Forum.

For more information:

[http://www.venice.coe.int/site/main/Constitutional Justice E.asp](http://www.venice.coe.int/site/main/Constitutional_Justice_E.asp)

[http://www.venice.coe.int/WCCJ/WCCJ E.asp](http://www.venice.coe.int/WCCJ/WCCJ_E.asp)

<http://www.codices.coe.int>

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