Strasbourg, 23 April 2009

CAHVIO (2009) 7

AD HOC COMMITTEE ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (CAHVIO)

MONITORING MECHANISMS WITHIN THE COUNCIL OF EUROPE

Information document prepared by the
Directorate General of Human Rights and Legal Affairs

Table of Contents

A Introduction

B The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

C The European Social Charter and Revised European Social Charter

D The Group of States against Corruption (GRECO)

E The Convention on Cybercrime

F The Council of Europe Convention on Action against Trafficking in Human Beings

G The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

H The Commissioner for Human Rights

- The mandate of the Commissioner

I Examples of provisions on monitoring in recent Council of Europe conventions:

- The Convention on Cybercrime

- The Council of Europe Convention on the Prevention of Terrorism

- The Council of Europe Convention on Action against Trafficking in Human Beings

A Introduction

1. The Council of Europe has set up various follow-up mechanisms to international legal instruments, mostly conventions, which differ in type, legal nature and functioning, but have a common aim, i.e. to ensure the proper implementation by States of these instruments.

2. The most well known and important of these follow-up mechanisms is the European Court of Human Rights set up under the European Convention on Human rights (as amended by Protocol No. 11).

3. Numerous other Council of Europe conventions establish committees which meet regularly to exchange views on, and assess the application of, these conventions (see, for instance, the Criminal Law and Civil Law Conventions on Corruption [ETS 173 and 174], the Convention on Cybercrime [ETS 185], the Council of Europe Convention on Action against Trafficking in Human Beings [CETS 197], and the Convention on the Prevention of Terrorism [CETS 196].

4. In addition to the above, a number of other effective monitoring or follow-up mechanisms have been set up within the Council of Europe. The descriptions below outline how some of these monitoring mechanisms function.

B The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [ETS N° 126 –Strasbourg, 26.11.1987]

5. The Convention, which came into force on 1 February 1989, provides for the setting up of a committee, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). "The Committee [CPT] shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment."

6. The CPT's Members are independent and impartial experts from a variety of backgrounds, including lawyers, medical doctors and specialists in prison or police matters. They are elected for a four-year term by the Committee of Ministers, the Council of Europe's decision-making body, and can be re-elected twice. One Member is elected in respect of each contracting state.

7. The CPT visits places of detention (e.g. prisons and juvenile detention centres, police stations, holding centres for immigration detainees and psychiatric hospitals) to see how persons deprived of their liberty are treated and, if necessary, to recommend improvements to States.

8. CPT delegations visit contracting States periodically but may organise additional "ad hoc" visits if necessary. The Committee must notify the State concerned about the on-site visit but need not specify the period between the notification and the actual visit.

9. The recommendations which the CPT may formulate on the basis of facts found during the visit are included in a report which is sent to the State concerned and is the starting point for an ongoing dialogue. The reports are strictly confidential unless a State authorises its publication.

C European Social Charter [ETS No. 035 – Turin, 18.10.1961] and Revised European Social Charter [ETS No.163 –Strasbourg, 03.05.1996]

10. The European Social Charter is a treaty that protects fundamental social rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States parties. The Revised European Social Charter entered in force in 1998 and it is replacing the 1961 European Social Charter at a steady pace.

11. The European Committee of Social Rights is the body in charge of ascertaining whether countries have honoured the undertakings set out in the Charter. Its 13 independent, impartial Members are elected by the Committee of Ministers for a period of six years, renewable once. The Committee determines whether or not national law and practice in the States parties are in conformity with the Charter (Article 24 of the Charter, as amended by the 1991 Turin Protocol).

12. The control of conformity may occur through two different types of procedures:

a) A monitoring procedure based on national reports.

13. Every year the States parties submit a report indicating how they implement the Charter in law and in practice. The Committee examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as “conclusions”, are published every year.

b) A collective complaints procedure

14. Under a protocol opened for signature in 1995, which came into force in 1998, collective complaints of violations of the Charter may be lodged with the European Committee of Social Rights. The complaint is directed against one of the state parties that have ratified the protocol and concerns one or more provisions of the Charter.

15. The Committee examines the complaint and, if the formal requirements have been met, declares it admissible and a written procedure is set in motion, with an exchange of memorials between the parties.

16. The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a report, which is made public within four months of its being forwarded.

17. Finally, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the state concerned take specific measures to bring the situation into line with the Charter.

D The Group of States against Corruption (GRECO)

18. The Group of States against corruption (GRECO), is an Enlarged Partial Agreement of the Council of Europe set up in 1999. Member States of the Council of Europe, non-Member States and the European Community may participate in GRECO on an equal footing.

19. The aim of GRECO is to improve the capacity of its Members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with their undertakings in this field.

20. GRECO carries out evaluation procedures, which are divided into rounds, in respect of each of its Members. GRECO adopts a questionnaire for each evaluation round addressed to all the Members concerned. GRECO appoints different evaluation teams to evaluate each Member by carrying out an on-site evaluation visit. The evaluation teams are composed of experts appointed by the State parties to GRECO.

21. The team prepares a preliminary draft report assessing the state of the law and the practice in relation to the provisions selected for the evaluation round. The draft report is submitted to GRECO for discussion and adoption. The report contains recommendations addressed to the Member to improve its domestic laws and practices. GRECO invites the Member to report on the measures taken in order to comply with these recommendations.

E The Convention on Cybercrime [ETS N°185 - Strasbourg, 08.11.2001]

22. The Convention on Cybercrime is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. Its main objective is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation. The Convention entered into force on 1 July 2004.

23. Article 46 of the Convention creates a framework for the parties to consult regarding implementation of the Convention, the effect of significant legal, policy or technological developments pertaining to the subject of computer or computer related crime and the collection of evidence in electronic form, and the possibility of supplementing or amending the Convention.

24. The procedure is flexible and it is left to the parties to decide how and when to convene if they so wish. The Cybercrime Convention Committee (T-CY) met for the first time in Strasbourg in March 2006.

F Council of Europe Convention on Action against Trafficking in Human Beings [CETS N° 197 – Strasbourg, 03.05.05]

25. The Council of Europe Convention on Action against Trafficking in Human Beings mainly focuses on the protection of victims of trafficking and the safeguarding of their rights. It aims at preventing trafficking as well as prosecuting traffickers.

26. The Convention provides for the setting up of an independent monitoring mechanism guaranteeing parties' compliance with its provisions. It has two pillars:

a) the Group of Experts against Trafficking in Human Beings (GRETA)

27. GRETA is in charge of monitoring the implementation of the Convention. It should have a minimum of 10 and a maximum of 15 Members among nationals of States parties to the Convention. It is a technical body composed of independent and highly qualified experts in the area of human rights, assistance and protection to victims, with the task of adopting a report and conclusions on each party's implementation of the Convention.

b) the Committee of the Parties

28. The Committee of the Parties, a political body, is composed of representatives in the Committee of Ministers of the parties to the Convention and of representatives of parties non-Members of the Council of Europe.

29. Article 38 of the Convention details the functioning of the monitoring procedure and the interaction between GRETA and the Committee of the Parties. The evaluation procedure will be divided into rounds. At the beginning of each round GRETA will autonomously define the provisions to be monitored and determine the most appropriate means to carry out the evaluation. This is likely to commence by requesting the Parties to complete a questionnaire which could then be followed up with additional requests for information. If GRETA considers it necessary it may also request information from civil society and/or organise country visits in order to obtain more information.

30. When GRETA has received all the necessary information it will prepare its draft report which will be sent to the Party concerned for comments. When the comments have been received GRETA will prepare its final report and conclusions which will be sent at the same time to the Party concerned and the Committee of the Parties. GRETA's final report together with the Party's comments will be made public and is not subject to modification by the Committee of the Parties.

31. The Committee of the Parties may adopt recommendations indicating the measures to be taken by the Party concerned to implement GRETA's conclusions, if necessary setting a date for submitting information on their implementation, and promoting cooperation to ensure the proper implementation of the Convention.

G The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

32. In July 2007, the Council of Europe adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. This instrument is the first to establish the various forms of sexual abuse of children as criminal offences, including such abuse committed in the home or the family.

33. The monitoring system foreseen by the Convention is based essentially on a body, the Committee of the Parties, composed of representatives of the Parties to the Convention, including representatives of Parties that may accede to the Convention under Articles 45 and 46.

34. The Committee of the Parties is destined to serve as a centre for the collection, analysis and sharing of information, experiences and good practice between States to improve their policies for preventing and combating sexual exploitation and abuse of children. With respect to the Convention, the Committee of the Parties shall monitor the implementation of the Convention and:

a. plays a role in the effective implementation of the Convention, by making proposals to facilitate or improve the effective use and implementation of the Convention, including the identification of any problems and the effects of any declarations made under the Convention;

b. plays a general advisory role in respect of the Convention by expressing an opinion on any question concerning the application of the Convention;
c. serves as a clearing house and facilitates the exchange of information on significant legal, policy or technological developments in relation to the application of the provisions of the Convention.

H The Commissioner for Human Rights

35. The Commissioner for Human Rights is an independent institution within the Council of Europe, mandated to promote the awareness of and respect for human rights in the 46 Council of Europe Member States.

36. The initiative for setting up the institution was taken by the Council of Europe's Heads of State and Government at their Second Summit in Strasbourg in October 1997. On 7 May 1999, the Committee of Ministers adopted a resolution which instituted the Office of the Commissioner and elaborated the Commissioner's mandate.

37. The fundamental objectives of the Commissioner for Human Rights are laid out in Resolution (99) 50 on the Council of Europe Commissioner for Human Rights:

- To foster the effective observance of human rights, and assist Member States in the implementation of Council of Europe human rights standards;
- To promote education in and awareness of human rights in Council of Europe Member States;
- To identify possible shortcomings in the law and practice concerning human rights;
- To facilitate the activities of national ombudsperson institutions and other human rights structures; and
- To provide advice and information regarding the protection of human rights across the region.

38. The Commissioner's Office cannot act upon individual complaints, but the Commissioner can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals.

39. The Commissioner seeks to engage in permanent dialogue with Council of Europe Member States and conducts official country missions for a comprehensive evaluation of the human rights situation.

40. The Commissioner's reports contain both an analysis of human rights practices and detailed recommendations about possible ways of improvement. The reports are presented to the Committee of Ministers and the Parliamentary Assembly. Subsequently they are published and widely circulated in the policy-making and NGO community as well as the media.

41. A few years after the official visit to a country, the Commissioner or his Office carries out a follow-up visit to assess the progress made in implementing the recommendations. The Commissioner issues a follow-up report, which is also widely publicised.

42. When the Commissioner considers it appropriate, his Office issues recommendations regarding a specific human rights issue in a single Member state (or several).

43. The Commissioner is further mandated to promote awareness of human rights in Council of Europe Member States. To this end, the Commissioner's Office organises and co-organises seminars and events on various human rights themes, and seeks to engage in permanent dialogue with governments, civil society organisations and educational institutions in order to improve the public's awareness of Council of Europe human rights standards.

I Examples of provisions on monitoring in recent Council of Europe instruments

The Convention on Cybercrime

Article 46 - Consultations of the Parties

1 The Parties shall, as appropriate, consult periodically with a view to facilitating:

a the effective use and implementation of this Convention, including the identification of any problems thereof, as well as the effects of any declaration or reservation made under this Convention;

b the exchange of information on significant legal, policy or technological developments pertaining to cybercrime and the collection of evidence in electronic form;

c consideration of possible supplementation or amendment of the Convention.

2 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the result of consultations referred to in paragraph 1.

3 The CDPC shall, as appropriate, facilitate the consultations referred to in paragraph 1 and take the measures necessary to assist the Parties in their efforts to supplement or amend the Convention. At the latest three years after the present Convention enters into force, the European Committee on Crime Problems (CDPC) shall, in co-operation with the Parties, conduct a review of all of the Convention's provisions and, if necessary, recommend any appropriate amendments.

4 Except where assumed by the Council of Europe, expenses incurred in carrying out the provisions of paragraph 1 shall be borne by the Parties in the manner to be determined by them.

5 The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this article.

Council of Europe Convention on the Prevention of Terrorism

Article 30 – Consultation of the Parties

1. The Parties shall consult periodically with a view to:

a making proposals to facilitate or improve the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration made under this Convention;

b formulating its opinion on the conformity of a refusal to extradite which is referred to them in accordance with Article 20, paragraph 8;

c making proposals for the amendment of this Convention in accordance with Article 27;

d formulating their opinion on any proposal for the amendment of this Convention which is referred to them in accordance with Article 27, paragraph 3;

e expressing an opinion on any question concerning the application of this Convention and facilitating the exchange of information on significant legal, policy or technological developments.

2. The Consultation of the Parties shall be convened by the Secretary General of the Council of Europe whenever he finds it necessary and in any case when a majority of the Parties or the Committee of Ministers request its convocation.

3. The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this article.

Council of Europe Convention on Action against Trafficking in Human Beings

Chapter VII – Monitoring mechanism

Article 36 – Group of experts on action against trafficking in human beings

1 The Group of experts on action against trafficking in human beings (hereinafter referred to as “GRETA”), shall monitor the implementation of this Convention by the Parties.

2 GRETA shall be composed of a minimum of 10 Members and a maximum of 15 Members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.

3 The election of the Members of GRETA shall be based on the following principles:

a they shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;

b they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;

c no two Members of GRETA may be nationals of the same State;

d they should represent the main legal systems.

4 The election procedure of the Members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

Article 37 – Committee of the Parties

1 The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the Member States Parties to the Convention and representatives of the Parties to the Convention, which are not Members of the Council of Europe.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the Members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

Article 38 – Procedure

1 The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.

2 GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.

3 GRETA may request information from civil society.

4 GRETA may subsidiarily organise, in co-operation with the national authorities and the “contact person” appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.

5 GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.

6 On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.

7 Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

Chapter X – Monitoring mechanism

Article 39 – Committee of the Parties

1 The Committee of the Parties shall be composed of representatives of the Parties to the Convention.

2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.

3 The Committee of the Parties shall adopt its own rules of procedure.

Article 40 – Other representatives

1 The Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental committees, shall each appoint a representative to the Committee of the Parties.

2 The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting the latter.

3 Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

4 Representatives appointed under paragraphs 1 to 3 above shall participate in meetings of the Committee of the Parties without the right to vote.

Article 41 – Functions of the Committee of the Parties

1 The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention.

2 The Committee of the Parties shall facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children.

3 The Committee of the Parties shall also, where appropriate:

a facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration or reservation made under this Convention;

b express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments.

4 The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions pursuant to this article.

5 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.