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Regional Round Table
“Case Law Departments and Other Tools for the Harmonisation
of Judicial Practice”

Belgrade, Republic of Serbia

Aero klub, Uzun Mirkova 4

26 June 2017

Concept paper

Background

Harmonisation of case law aims at ensuring effective and qualitative justice in an equitable and coherent manner based on a common understanding of national law and international standards. This is achieved through a combination of methods, procedures, processes and individual actions. The enhanced application of the Council of Europe legal instruments at the national level is primarily contingent on coherent judicial action. Inconsistent interpretation of relevant legal instruments adversely affects their implementation, thus resulting in numerous complaints being brought to the European Court of Human Rights (ECtHR). Most problems do not arise from the quality of legal texts, but rather are attributable to inconsistent judicial interpretation.

Moreover, discrepancies in domestic case law may in themselves provoke legal uncertainty to such an extent as to violate the right to a fair trial enshrined in the European Convention on Human Rights (ECHR). Further, different interpretations given by different courts in similar cases create confusion for the parties and diminish the confidence the society places in the judicial system. Ultimately, inconsistent interpretation also creates space for abuse.

Harmonising case law in a given national legal order is necessarily a complex and delicate process on account of the inevitable tension between judicial independence and the need for a coherent and predictable legal order. A fine balance should be struck between the judicial discretion in interpretation of domestic and international law and the need to ensure that this interpretation is consistent.

Member States' judicial authorities have developed a wealth of different practices in response to this challenge. At the same time, specialised bodies within courts in charge of systematising the judicial practice remain – case law departments or their analogues – play the primary role in ensuring that judges and legal advisors from within a certain jurisdiction have a regularly updated information on the trends in judicial practice in a given country or on the standards set by the European Court of Human Rights.

The objective of the regional round table will be to review and discuss different concepts and examples of good practice in the Western Balkans with regard to national mechanisms for the harmonisation of judicial practice that can contribute to a more effective adjudication of numerous issues arising under the European Convention of Human Rights and national legislation. The focus, in particular, will be on the role of case law departments (or their analogues) within courts, which are in charge of systematization of national judicial practice and follow-up on the practice of the European Court of Human Rights.

The round table is a follow-up to the International Forum “Dialogue of courts - a tool for the harmonisation of national judicial practice” held in Sarajevo, Bosnia and Herzegovina, on 21-22 June 2016.

Venue and language

The round table will be organised by the Council of Europe, in co-operation with the Supreme Court of Cassation of the Republic of Serbia and Judicial Academy. The working languages will be English and Bosnian/Croatian/Montenegrin/Serbian with simultaneous interpretation provided.

Programme

Venue: Aeroklub, Uzun Mirkova 4, Belgrade

Plenary session

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| 9:00 - 9:30 | Registration of participants |
| 9.30 – 10.00 | Opening remarks

<i>Dragomir MILOJEVIC, President of the Supreme Court of Cassation</i>

<i>Tania VAN DIJK, Coordinator, EU/CoE Horizontal Facility for Western Balkans and Turkey, Office of THE Directorate General for Programmes (ODGP), Council of Europe</i> |
| 10:00 - 12:00 | Challenges to a coherent judicial practice: a positive response by the judiciary (presentation of harmonisation tools/methodologies applied in the western Balkans). Discussion
<i>Moderator: Vesko KRSTAJIC, Judge of the Supreme Court of Cassation</i> |
| 11:00 – 11:15 | Coffee-break |
| 12:00 –12:30 | Harmonisation of judicial practice in the Council of Europe member states: the Organisation's efforts and approaches
<i>Sergey DIKMAN, Project Coordinator, Human Rights National Implementation Division, DG I</i> |
| 12:30 –14:00 | Lunch |
| 14:00 – 16:00 | Strengthening case law departments: ways forward
<i>Moderator: Vesna POPOVIC, Judge of the Supreme Court of Cassation</i> |
| 15:30 – 15:45 | Coffee break |
| 16:00 – 16:30 | The role of judicial training in harmonising national case law.
<i>Moderator: Nenad VUJIC, Director, Judicial Academy</i> |
| 16:30 –17:00 | Conclusions. Follow-up. Closing remarks. |